



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAY 12 2016

Mr. Douglas E. Lieb  
Emery, Celli, Brinckerhoff & Abady LLP  
600 Fifth Avenue, 10th Floor  
New York, NY 10027

Dear Mr. Lieb:

This letter is in response to your Freedom of Information Act request EPA-R2-2016-003997 for *"All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, prior to November 4, 2015, or after November 24, 2015."*

Please note that three of the responsive documents contain handwritten or typed comments that are considered editorial in nature about substantive matters and have been partially redacted. These redacted segments are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5). Specifically, these redacted segments are deliberative and predecisional in nature, and thus are privileged. Disclosure of these materials would have a chilling effect on the ability of Agency personnel to engage in frank internal discussions with respect to the subject matter to which the redacted materials pertain. Wherever possible, reasonably segregable nonexempt segments of the responsive materials have been provided. The redacted documents may appear multiple times within the compilation of responsive documents and in each case the exemption is noted in the margin.

You may appeal this determination by submitting your appeal via FOIAONLINE at <https://foiaonline.regulations.gov/foia/action/public/home> or to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: [FOIA\\_HQ@epa.gov](mailto:FOIA_HQ@epa.gov); only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the case file number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

For any questions concerning this matter, please contact Richard Balla, Chief of the Watershed Management Branch, at 212-637-3788.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric Schaaf", is written over the printed name and title.

Eric Schaaf  
Regional Counsel

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, October 05, 2015 11:43 AM  
**To:** Balla, Richard; Montella, Daniel  
**Subject:** Pier 54 replacement PN has been released.

USACE released the Pier 54 replacement PN on Oct 2. Closing date is November 4.

<http://www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/2015/Oct15/199800290.pdf>

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 1:42 PM  
**To:** Balla, Richard  
**Subject:** RE: All, i had to head home during lunch. Dan/Bob: please work on the Pier 55 letter (more)

FYI - Traci is bringing the letter upstairs.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 12:22 PM  
**To:** Ausubel, Seth ; Nyman, Robert ; Negron, Nesmarie ; Tedesco, Mark ; Montella, Daniel  
**Subject:** All, i had to head home during lunch. Dan/Bob: please work on the Pier 55 letter (more)

All, i had to head home during lunch.

Dan/Bob: please work on the Pier 55 letter: goal is to address Joan's question and get the letter thru Jeff and to RA asap TODAY.

I will call in for the NEP meeting @ 1pm

I will also call in for the staff meeting @ 2 today.

I will take leave 3:15-4:45; Nesmarie: can you act?

-rick

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)



## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 2:23 PM  
**To:** Balla, Richard  
**Subject:** RE: Bob, Dan: i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

2:30 works. Call Joan's office.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Friday, October 23, 2015 10:20 AM  
**To:** Montella, Daniel ; Nyman, Robert  
**Subject:** Bob, Dan: i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

Bob, Dan:

i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

My meeting ends at 2:30 but i think it may run over, so 3 is safer. But if it needs to be at 2:30 i will try to make it and be on time.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 3:27 PM  
**To:** Balla, Richard  
**Subject:** RE: Pier 55 nutrients

Looks good.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Friday, October 23, 2015 3:25 PM  
**To:** Nyman, Robert  
**Cc:** Montella, Daniel  
**Subject:** Pier 55 nutrients

Bob: what do you think of this? Feel free to revise as you see fit.

The plan for the pier includes significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 3:27 PM  
**To:** Lamster, Stephanie  
**Subject:** general conformity language

Hi Stephanie,

We are just looking for a little more beef for the following comment on the Pier 54 Public Notice. If you have some boiler plate language, that would be great.

“USACE should make a general conformity determination with regard to air emissions during construction.”

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, December 29, 2015 11:18 AM  
**To:** Balla, Richard  
**Subject:** FOIA file in G

I created a file in G called Pier 54 FOIA response with all my entries. Please add whatever you have. I'll rename your entries to keep them in the same format as mine. Berry said he had a few things to send.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Monday, October 26, 2015 4:00 PM  
**To:** Gratz, Jeff  
**Subject:** RE: New information re Corps PN NAN-1998-00290

Sorry, it's Steve\_sinkevich@fws.gov

- Dan

-----Original Message-----

From: Gratz, Jeff  
Sent: Monday, October 26, 2015 11:21 AM  
To: Montella, Daniel  
Subject: FW: New information re Corps PN NAN-1998-00290

Hi Dan - Do you have another email address to the person below.

- Jeff

-----Original Message-----

From: RiverCAC@aol.com [mailto:RiverCAC@aol.com]  
Sent: Monday, October 26, 2015 11:17 AM  
To: Gratz, Jeff <Gratz.Jeff@epa.gov>  
Subject: Re: New information re Corps PN NAN-1998-00290

thanks Jeff. the email to Steve.sinkevich@fws.gov bounced. Would you tell me what his new email is?</HTML>

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 10:36 AM  
**To:** Matthews, Joan  
**Subject:** Accepted: Pier 54

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 20, 2015 4:12 PM  
**To:** Matthews, Joan  
**Subject:** Accepted: Pier 54



## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Wednesday, November 25, 2015 9:19 AM  
**To:** Balla, Richard  
**Subject:** RE: FYI, I added 2 wetland items to MMN

OK.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Wednesday, November 25, 2015 9:17 AM  
**To:** Montella, Daniel ; Nyman, Robert  
**Subject:** FYI, I added 2 wetland items to MMN

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

**Pier 54:** Rick Balla sent a letter to the U.S. Army Corps of Engineers (ACOE) on November 24 withdrawing concerns of unacceptable impacts for the ACOE issuance of the permit for the Pier 54 project, based on our review of additional information. We did provide comments on the project with respect to resiliency, shading, stormwater, marine debris, nutrients and overall decking coverage in this segment of the Hudson River Park Trust site. (contact: Bob Nyman)

**Wetlands Training:** Bob Nyman and Rick Balla will be at the EPA Region 3 offices on Dec 2-3 for an EPA-HQ led training session on intermediate level wetlands training. (Contact Bob Nyman)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, January 11, 2016 11:38 AM  
**To:** Jeff Gratz  
**Subject:** Pier 54/55 FOIA request and file

Jeff,

Below is the FOIA request.

Here is the file where we are compiling our response. G:\Clean Water Division\WMB\Pier 54 FOIA response

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Isaac, Martha  
**Sent:** Thursday, December 17, 2015 4:38 PM  
**To:** Balla, Richard  
**Cc:** Nyman, Robert  
**Subject:** Tracking Number :EPA-R2-2016-002169 FOIA Online Request Due 1-15-16

Rick - Please let me know if you have any responsive records. Thanks.

### Request Details

Tracking Number :EPA-R2-2016-002169  
Requester : Douglas E. Lieb  
Organization :Emery Celli Brinckerhoff & Abady LLP  
Requester Has Account :Yes  
Email Address :dlieb@ecbalaw.com  
Phone Number : N/A  
Fax Number : N/A  
Address :600 Fifth Avenue  
10th Floor  
City :New York  
State/Province : NY  
Zip Code/Postal Code : 10027

### Short Description:

All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive.

\*\*\*\*\*

Martha Isaac  
Clean Water Division  
USEPA  
290 Broadway, New York, NY 10007  
212-637-3761  
Alternate Work Location: Tuesday and Thursday (718) 277-7593  
[isaac.martha@epa.gov](mailto:isaac.martha@epa.gov)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 06, 2015 9:58 AM  
**To:** Balla, Richard  
**Subject:** RE: Pier 54 replacement PN has been released: Bob: can you put in MMN? I will mention at staff meeting this morning. -rick

Yes.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Tuesday, October 06, 2015 9:38 AM  
**To:** Nyman, Robert ; Montella, Daniel  
**Subject:** RE: Pier 54 replacement PN has been released: Bob: can you put in MMN? I will mention at staff meeting this morning. -rick

RE: Pier 54 replacement PN has been released:

Bob:

can you put in MMN? I will mention at staff meeting this morning.

-rick

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert  
**Sent:** Monday, October 05, 2015 11:43 AM  
**To:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>  
**Subject:** Pier 54 replacement PN has been released.

USACE released the Pier 54 replacement PN on Oct 2. Closing date is November 4.

<http://www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/2015/Oct15/199800290.pdf>

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 10:21 AM  
**To:** Balla, Richard; Montella, Daniel  
**Subject:** RE: Bob, Dan: i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

I'll check with Jeff. It is his flex day, but he is in for now and indicated that he would probably stay for the call.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Friday, October 23, 2015 10:20 AM  
**To:** Montella, Daniel ; Nyman, Robert  
**Subject:** Bob, Dan: i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

Bob, Dan:

i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

My meeting ends at 2:30 but i think it may run over, so 3 is safer. But if it needs to be at 2:30 i will try to make it and be on time.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 12:24 PM  
**To:** Balla, Richard  
**Cc:** Montella, Daniel  
**Subject:** RE: All, i had to head home during lunch. Dan/Bob: please work on the Pier 55 letter (more)

Rick,

I handed Joan the revised draft around 12:00. She said she would look at it shortly.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 12:22 PM  
**To:** Ausubel, Seth ; Nyman, Robert ; Negron, Nesmarie ; Tedesco, Mark ; Montella, Daniel  
**Subject:** All, i had to head home during lunch. Dan/Bob: please work on the Pier 55 letter (more)

All, i had to head home during lunch.

Dan/Bob: please work on the Pier 55 letter: goal is to address Joan's question and get the letter thru Jeff and to RA asap TODAY.

I will call in for the NEP meeting @ 1pm

I will also call in for the staff meeting @ 2 today.

I will take leave 3:15-4:45; Nesmarie: can you act?

-rick

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 10:39 AM  
**To:** Montella, Daniel; Balla, Richard  
**Subject:** RE: Bob, Dan: i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

I spoke to Jeff and he may or may not stick around.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Friday, October 23, 2015 10:38 AM  
**To:** Balla, Richard ; Nyman, Robert  
**Subject:** RE: Bob, Dan: i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

Ok by me

- Dan

---

**From:** Balla, Richard  
**Sent:** Friday, October 23, 2015 10:20 AM  
**To:** Montella, Daniel; Nyman, Robert  
**Subject:** Bob, Dan: i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

Bob, Dan:

i would like to call in for the Pier 55 call. Can it be at 3 rather than 2:30 if possible?

My meeting ends at 2:30 but i think it may run over, so 3 is safer. But if it needs to be at 2:30 i will try to make it and be on time.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY  
10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)



## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 13, 2015 11:20 AM  
**To:** Balla, Richard; Montella, Daniel  
**Subject:** a couple quick clarifications on pier 54

- The first line of the Pier 54 PN states, "The New York District, Corps of Engineers has received a request for authorization of the construction of a replacement pier under an existing Department of Army permit issued on May 31, 2000..." Unless I'm missing something, I'm interpreting this as the project would be done under the existing permit.
- Here is the Times article on the civic group lawsuit, which includes Rob Buchannan.  
[http://www.nytimes.com/2015/06/12/nyregion/civic-group-sues-to-halt-hudson-river-park-backed-by-barry-diller.html?\\_r=0](http://www.nytimes.com/2015/06/12/nyregion/civic-group-sues-to-halt-hudson-river-park-backed-by-barry-diller.html?_r=0) According to the article, the groups are suing because they say the project needs to undergo a new environmental review because the Trust relied on an older analysis that did not include the relocation of the pier.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, October 26, 2015 7:57 AM  
**To:** Laurita, Matthew  
**Subject:** FW: general conformity language

Hey Matt,

Thanks for helping. If you could please send me the more expanded language on conformity (this morning if possible), that would be great.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Lamster, Stephanie  
**Sent:** Friday, October 23, 2015 3:49 PM  
**To:** Nyman, Robert  
**Subject:** Re: general conformity language

Hi Bob,

I thought I had saved an email with boiler plate GC text, but I can't seem to find it regardless of what terms I search under. I would give Matt Laurita a call. He is (or was before I went on maternity leave) on our mobile source team and is very helpful. His number is 212-637-3895. If he has change positions he will either be able to point you to the correct person, or just give you the language you are looking for. If you aren't able to get a response quickly, please let me know.

Best,  
Stephanie

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 3:26 PM  
**To:** Lamster, Stephanie  
**Subject:** general conformity language

Hi Stephanie,

We are just looking for a little more beef for the following comment on the Pier 54 Public Notice. If you have some boiler plate language, that would be great.

“USACE should make a general conformity determination with regard to air emissions during construction.”

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, January 29, 2016 11:50 AM  
**To:** Richard Balla; Joan Matthews (matthews.joan@epa.gov); Shore, Berry; Montella, Daniel  
**Subject:** Search hours needed for Pier 54 FOIA

Wanda Calderon has requested the number of hours that we spent putting together this package.

Please let me know today if possible, even if you are claiming zero.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, January 11, 2016 12:27 PM  
**To:** Gratz, Jeff  
**Subject:** RE: Pier 54/55 FOIA request and file

Thanks.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Gratz, Jeff  
**Sent:** Monday, January 11, 2016 12:06 PM  
**To:** Nyman, Robert  
**Subject:** RE: Pier 54/55 FOIA request and file

Thanks, Bob. I put one email in the file (a confirmation to Marcy that I received her email letter).

- Jeff

---

**From:** Nyman, Robert  
**Sent:** Monday, January 11, 2016 11:38 AM  
**To:** Gratz, Jeff <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>  
**Subject:** Pier 54/55 FOIA request and file

Jeff,

Below is the FOIA request.

Here is the file where we are compiling our response. G:\Clean Water Division\WMB\Pier 54 FOIA response

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Isaac, Martha  
**Sent:** Thursday, December 17, 2015 4:38 PM  
**To:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** Tracking Number :EPA-R2-2016-002169 FOIA Online Request Due 1-15-16

Rick - Please let me know if you have any responsive records. Thanks.

**Request Details**

Tracking Number :EPA-R2-2016-002169

Requester : Douglas E. Lieb

Organization :Emery Celli Brinckerhoff & Abady LLP

Requester Has Account :Yes

Email Address :dlieb@ecbalaw.com

Phone Number : N/A

Fax Number : N/A

Address :600 Fifth Avenue

10th Floor

City :New York

State/Province : NY

Zip Code/Postal Code : 10027

**Short Description:**

All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive.

\*\*\*\*\*

Martha Isaac

Clean Water Division

USEPA

290 Broadway, New York, NY 10007

212-637-3761

Alternate Work Location: Tuesday and Thursday (718) 277-7593

[isaac.martha@epa.gov](mailto:isaac.martha@epa.gov)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 11:57 AM  
**To:** Montella, Daniel  
**Subject:** RE: some developments on the pier 55 comment letter...

**Categories:** Red Category

Thanks.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 11:56 AM  
**To:** Nyman, Robert  
**Subject:** RE: some developments on the pier 55 comment letter...

Looks fine. I was not able yesterday to see Joan's comment about the "...If such structures..." sentence. I wrote it. It's not necessary and not worth explaining. Dump it.

- Dan

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 10:38 AM  
**To:** Montella, Daniel  
**Subject:** FW: some developments on the pier 55 comment letter...

Dan,

I made the minor edits noted, but also removed the highlighted sentence that starts off, "If such structures proliferate..." I'm not sure if you added that sentence or if someone else did. Are you OK with it disappearing?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Monday, November 02, 2015 5:53 PM  
**To:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>



**Cc:** Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>

**Subject:** Bob: some developments on the pier 55 comment letter...

Bob: some developments on the pier 55 comment letter...

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

Begin forwarded message:

**From:** "Matthews, Joan" <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>

**Date:** November 2, 2015 at 5:00:25 PM EST

**To:** "Montella, Daniel" <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>, "Balla, Richard" <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>

**Cc:** "Gratz, Jeff" <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>

**Subject:** pier 55 draft comments nov 2 404q -3a.docx

Ok – thanks very much Dan. Minor edits and a question for something to be made more explicit. Please make the change, run it by Jeff, and put it through the concurrence process. I will be in the office tomorrow afternoon, but feel free, Jeff, to send up first thing in the a.m.  
Joan

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Thursday, October 15, 2015 9:36 AM  
**To:** Neftleberg, Traci  
**Cc:** Balla, Richard; Montella, Daniel; Jeff Gratz  
**Subject:** please schedule 15 with Jeff/Joan

Traci,

Can you please schedule two meetings:

- Week of October 19: 15 minute regarding our approach to the Pier 54 comment letter. Attendees: Jeff, Joan, Rick, Dan and me.
- Week of October 26: 15 minute to review draft Pier 54 comment letter. Attendees: Jeff, Joan, Rick, Dan and me.

Comments are due to the Corps on Nov 4.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 2:40 PM  
**To:** Balla, Richard  
**Subject:** RE: Pier 54: BOB: what edits were made? did the sentence come out? did something else go in? It's hard for me to tell...

The sentence came out.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 2:29 PM  
**To:** Nyman, Robert  
**Subject:** RE: Pier 54: BOB: what edits were made? did the sentence come out? did something else go in? It's hard for me to tell...

RE: Pier 54:

BOB:

what edits were made to the letter? did the sentence come out? did something else go in? It's hard for me to tell...

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 2:16 PM  
**To:** Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>; Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Matthews, Joan <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Subject:** RE: Pier 54

Tom Creamer just called a few minutes ago and told me. Does this change what our current plans are?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:13 PM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>; Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Matthews, Joan <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Subject:** RE: Pier 54

That's news to me. We will follow up with the corps

- Dan

---

**From:** Shore, Berry  
**Sent:** Tuesday, November 03, 2015 2:06 PM  
**To:** Montella, Daniel; Balla, Richard; Matthews, Joan  
**Subject:** FW: Pier 54

From Schumer's office.

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 03, 2015 10:44 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** Pier 54

FYI, Army Corps told me yesterday that the comment period was extended to Nov. 19<sup>th</sup>. Do let me know if anything changes on your end.

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)

## Nyman, Robert

---

**From:** DARTER Sys Admin <darter-hq@epa.gov>  
**Sent:** Friday, October 30, 2015 7:19 AM  
**To:** Nyman, Robert  
**Subject:** Today's DARTER Alerts

### Public Notices coming due in 5 days

Comments on the following Public Notices are due by 11/04/2015. Please log in to DARTER to complete your review.

Public Notice: [Hudson River Park Trust - Piers 54 Replacement](#)  
Folder: NAN-1998-00290  
Permit Application: Placeholder for Permit App  
Review Status: Pending

Total Public Notices coming due: 1

Link to DARTER application: <https://ofmext.epa.gov/darter>

Sent from DARTER database on 10/30/2015 7:19 AM

[darter\_data/owpub/vmwaters1.rtpnc.epa.gov]

## Nyman, Robert

---

**From:** DARTER Sys Admin <darter-hq@epa.gov>  
**Sent:** Friday, October 30, 2015 7:19 AM  
**To:** Montella, Daniel  
**Subject:** Today's DARTER Alerts

### Public Notices coming due in 5 days

Comments on the following Public Notices are due by 11/04/2015.

Public Notice: [Hudson River Park Trust - Piers 54 Replacement](#)

Folder: NAN-1998-00290

Permit Application: Placeholder for Permit App

Review Status: Pending

Assigned to: Robert Nyman

Total Public Notices coming due: 1

### Pending Public Notices due today

The following Public Notices are due today but are still categorized as "Pending". Please re-categorize these Public Notices as appropriate.

Public Notice: [Thomas Sheridan-Boat slip-Lewes and Rehoboth Canal](#)

Folder: NAP-2015-01012

Permit Application: Sheridan Maintenance Dredging SX

Review Status: Pending

Assigned to: Robert Montgomerie

Total Pending Public Notices due: 1

Link to DARTER application: <https://ofmext.epa.gov/darter>

Sent from DARTER database on 10/30/2015 7:19 AM

[darter\_data/owpub/vmwaters1.rtpnc.epa.gov]

## Nyman, Robert

---

**From:** DARTER Sys Admin <darter-hq@epa.gov>  
**Sent:** Tuesday, October 20, 2015 7:21 AM  
**To:** Nyman, Robert  
**Subject:** Today's DARTER Alerts

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

### New Public Notices assigned to you

The following Public Notices were created yesterday by another user and were assigned to you.

Public Notice: [Hudson River Park Trust - Piers 54 Replacement](#)

Folder: NAN-1998-00290

Permit Application: Placeholder for Permit App

Created by: Joseph Morgan

Type: Standard CWA Permit

Review Status: Pending

Due Date: 11/04/2015

Files: 199800290.pdf

Location: New York, New York

Total Assigned Public Notices: 1

Link to DARTER application: <https://ofmext.epa.gov/darter>

Sent from DARTER database on 10/20/2015 7:21 AM

[darter\_data/owpub/vmwaters1.rtpnc.epa.gov]



## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 2:16 PM  
**To:** Montella, Daniel; Shore, Berry  
**Cc:** Balla, Richard; Matthews, Joan  
**Subject:** RE: Pier 54

Tom Creamer just called a few minutes ago and told me. Does this change what our current plans are?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:13 PM  
**To:** Shore, Berry  
**Cc:** Nyman, Robert ; Balla, Richard ; Matthews, Joan  
**Subject:** RE: Pier 54

That's news to me. We will follow up with the corps

- Dan

---

**From:** Shore, Berry  
**Sent:** Tuesday, November 03, 2015 2:06 PM  
**To:** Montella, Daniel; Balla, Richard; Matthews, Joan  
**Subject:** FW: Pier 54

From Schumer's office.

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 03, 2015 10:44 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** Pier 54

FYI, Army Corps told me yesterday that the comment period was extended to Nov. 19<sup>th</sup>. Do let me know if anything changes on your end.

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804

(c) 917-275-4243

[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, October 26, 2015 9:05 AM  
**To:** Laurita, Matthew  
**Subject:** RE: general conformity language

Good to know. How's this more abbreviated version?

Since the project location is within a non-attainment area for ozone and maintenance area for PM<sub>2.5</sub>, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Laurita, Matthew  
**Sent:** Monday, October 26, 2015 8:47 AM  
**To:** Nyman, Robert  
**Subject:** RE: general conformity language

Hi Bob,

Here's something a little more substantial you can use . I'm assuming the project location is NYC, so I referenced the air quality status of the area. if I'm wrong let me know.

--Matt

General conformity is a Clean Air Act requirement that ensures that federally funded, permitted, or licensed projects do not (1) cause or contribute to any new violation of any air quality standard, (2) increase the frequency or severity of any existing violation of any air quality standard, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Since the project location is within a non-attainment area for ozone and maintenance area for PM<sub>2.5</sub>, the project is subject to general conformity. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

---

**From:** Nyman, Robert  
**Sent:** Monday, October 26, 2015 7:57 AM  
**To:** Laurita, Matthew <[Laurita.Matthew@epa.gov](mailto:Laurita.Matthew@epa.gov)>  
**Subject:** FW: general conformity language

Hey Matt,

Thanks for helping. If you could please send me the more expanded language on conformity (this morning if possible), that would be great.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Lamster, Stephanie  
**Sent:** Friday, October 23, 2015 3:49 PM  
**To:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** Re: general conformity language

Hi Bob,

I thought I had saved an email with boiler plate GC text, but I can't seem to find it regardless of what terms I search under. I would give Matt Laurita a call. He is (or was before I went on maternity leave) on our mobile source team and is very helpful. His number is 212-637-3895. If he has change positions he will either be able to point you to the correct person, or just give you the language you are looking for. If you aren't able to get a response quickly, please let me know.

Best,  
Stephanie

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 3:26 PM  
**To:** Lamster, Stephanie  
**Subject:** general conformity language

Hi Stephanie,

We are just looking for a little more beef for the following comment on the Pier 54 Public Notice. If you have some boiler plate language, that would be great.

"USACE should make a general conformity determination with regard to air emissions during construction."

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** DARTER Sys Admin <darter-hq@epa.gov>  
**Sent:** Monday, October 19, 2015 2:49 PM  
**To:** Nyman, Robert  
**Subject:** Public Notice 'Hudson River Park Trust - Piers 54 Replacement' (240320) reassigned to you by John Cantilli

The following Public Notice has been reassigned to you by John Cantilli:

**ID:** [240320](#)

**Name:** Hudson River Park Trust - Piers 54 Replacement

**Type:** Standard CWA Permit

**DA Number:** NAN-1998-00290

**Due Date:** 11/04/2015

Link to DARTER application: <https://ofmext.epa.gov/darter>

Sent from DARTER database on 10/19/2015 2:49 PM

[darter\_data/owpub/ofmeapp1]

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, January 05, 2016 10:55 AM  
**To:** Calderon, Wanda  
**Subject:** RE: EPA-R2-2016-002169

We have until 1/15, yes? I think I have everything assembled that I have access to and from others, but my boss and I need to confer on it first.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Calderon, Wanda  
**Sent:** Tuesday, January 05, 2016 10:52 AM  
**To:** Nyman, Robert  
**Subject:** RE: EPA-R2-2016-002169

Hellooooo my dear confrere,

How are we on this?

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Nyman, Robert  
**Sent:** Tuesday, December 29, 2015 3:14 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>  
**Subject:** RE: EPA-R2-2016-002169

I did speak with the requester last week and we are collecting the material as electronic files. Once we are satisfied that we have everything, do we transmit them electronically to Martha?

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Calderon, Wanda  
**Sent:** Tuesday, December 22, 2015 1:04 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: EPA-R2-2016-002169

Hi Martha,

In the future and for your convenience (cuz I'm slow), all communications can be found in the CASE FILE/CORRESPONDENCE or UPLOADED SUPPORTING DOCUMENTATION tab in FOIAonline. That's all he submitted, however, there were some communications back-n-forth when I sought assignment guidance during initial stages (found in FO).

Having said this, if we require additional processing information (narrowed scope, etc.), the subject matter expert should reach out to requester (preferably via phone and then memorialize for the record) in order to obtain details that would help further identify responsive records. Memorializing the conversation obviously is for history and clarity purposes. This also allows me to "stop clock" in the event we don't get to speak w/requester during the first attempt.

Please ensure I obtain CC of any follow up exchanges or simply upload into FO. thx

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Isaac, Martha  
**Sent:** Tuesday, December 22, 2015 11:02 AM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** EPA-R2-2016-002169

Hi Wanda - Bob Nyman of EPA's Watershed management Branch was assigned to review this FOIA. He is seeking additional information. Please let me know if the requester has provided anything other than the short description below. Thanks.

"All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive."

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 3:03 PM  
**To:** Arcaya, Alyssa; Isaac, Martha; Pabst, Douglas  
**Cc:** Balla, Richard; Nyman, Robert  
**Subject:** RE: ???

Thanks, I'll process out to CWD.

Wanda Calderon  
FOIA Specialist

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 2:46 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alyssa@epa.gov](mailto:arcaya.alyssa@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.



## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Wednesday, December 30, 2015 8:17 AM  
**To:** Calderon, Wanda  
**Subject:** RE: EPA-R2-2016-002169

Thanks Wanda.

Have a happy new year, but then I didn't need to tell you that did I?!!

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Calderon, Wanda  
**Sent:** Wednesday, December 30, 2015 8:15 AM  
**To:** Nyman, Robert ; Isaac, Martha  
**Subject:** RE: EPA-R2-2016-002169

Hi Bob,

Sorry for delayed reply – yes, transfer responsive materials to Martha for uploading into FOIA response system and final reply purposes.

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Nyman, Robert  
**Sent:** Tuesday, December 29, 2015 3:14 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>  
**Subject:** RE: EPA-R2-2016-002169

I did speak with the requester last week and we are collecting the material as electronic files. Once we are satisfied that we have everything, do we transmit them electronically to Martha?

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Calderon, Wanda  
**Sent:** Tuesday, December 22, 2015 1:04 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: EPA-R2-2016-002169

Hi Martha,

In the future and for your convenience (cuz I'm slow), all communications can be found in the CASE FILE/CORRESPONDENCE or UPLOADED SUPPORTING DOCUMENTATION tab in FOIAonline. That's all he submitted, however, there were some communications back-n-forth when I sought assignment guidance during initial stages (found in FO).

Having said this, if we require additional processing information (narrowed scope, etc.), the subject matter expert should reach out to requester (preferably via phone and then memorialize for the record) in order to obtain details that would help further identify responsive records. Memorializing the conversation obviously is for history and clarity purposes. This also allows me to "stop clock" in the event we don't get to speak w/requester during the first attempt.

Please ensure I obtain CC of any follow up exchanges or simply upload into FO. thx

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Isaac, Martha  
**Sent:** Tuesday, December 22, 2015 11:02 AM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** EPA-R2-2016-002169

Hi Wanda - Bob Nyman of EPA's Watershed management Branch was assigned to review this FOIA. He is seeking additional information. Please let me know if the requester has provided anything other than the short description below. Thanks.

"All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive."

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 3:03 PM  
**To:** Arcaya, Alyssa; Isaac, Martha; Pabst, Douglas  
**Cc:** Balla, Richard; Nyman, Robert  
**Subject:** RE: ???

Thanks, I'll process out to CWD.

Wanda Calderon

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 2:46 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alyssa@epa.gov](mailto:arcaya.alyssa@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Thursday, February 04, 2016 11:30 AM  
**To:** Balla, Richard; Nyman, Robert  
**Cc:** Calderon, Wanda  
**Subject:** FOIA request

Hi Rick and Bob,

Can you send me the FOIA request that you responded to regarding Pier 54/55?

Thank you.

Joan

## Nyman, Robert

---

**From:** Gratz, Jeff  
**Sent:** Monday, January 11, 2016 12:32 PM  
**To:** Nyman, Robert  
**Subject:** FW: comment Ir to Corps--Pier 54-55-Diller Island

-----Original Message-----

From: Gratz, Jeff  
Sent: Friday, November 20, 2015 10:00 AM  
To: 'RiverCAC@aol.com' <RiverCAC@aol.com>  
Subject: RE: comment Ir to Corps--Pier 54-55-Diller Island

Received. Thank you, Marcy.

- Jeff

-----Original Message-----

From: RiverCAC@aol.com [mailto:RiverCAC@aol.com]  
Sent: Thursday, November 19, 2015 1:19 PM  
To: Gratz, Jeff <Gratz.Jeff@epa.gov>  
Subject: comment Ir to Corps--Pier 54-55-Diller Island

Hi Jeff--here's your copy:

Subj: Comment letter on Public Notice NAN-1998-00290  
Date: 11/19/2015 1:14:56 PM Eastern Standard Time  
From: Cleanaircmpgn02@aol.com  
To: Christopher.S.Mallery@usace.army.mil  
CC: enck.judith@epa.gov, Steve\_Sinkevich@fws.gov, Steve\_Mars@FWS.gov, melissa.alvarez@noaa.gov

Dear Dr. Mallery,

Clean Air Campaign's comment letter on Public Notice NAN-1998-00290 issued on 10/5/15 is attached.

We would very much appreciate confirmation that the Corps has received this letter.

We would be happy to have the Corps substitute this shorter, proof-read 11/19/15 final draft for the longer previous 11/18/15 early draft that may have been FedExed to the Corps last night by mistake.

We would also be delighted to answer any questions that you or other federal officials may have.

Sincerely,

Marcy Benstock

Executive Director

Clean Air Campaign Inc./Open Rivers Project

Tel.: 212-582-2578

</HTML>

## Nyman, Robert

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:26 PM  
**To:** Nyman, Robert  
**Subject:** FW: Letter to Army Corps on Pier 54

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 24, 2015 11:24 AM  
**To:** Shore, Berry  
**Subject:** RE: Letter to Army Corps on Pier 54

Give me till 1 or 2, thanks!

---

**From:** Shore, Berry [<mailto:Shore.Berry@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 11:01 AM  
**To:** Martin, Nicholas (Schumer) <[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54

Thanks Nick!

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 24, 2015 11:00 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54

I'll get back to you soon.

---

**From:** Shore, Berry [<mailto:Shore.Berry@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 10:09 AM  
**To:** Martin, Nicholas (Schumer) <[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)>  
**Subject:** Letter to Army Corps on Pier 54

Nick:

Left a VM for you on this a short time ago.

I am under some pressure to move the letter out today.

Everyone here thinks the letter will offer no impediments for the project to moving forward.

Berry Shore, Intergovernmental Liaison  
Region 2, USEPA  
290 Broadway, 26<sup>th</sup> Floor  
New York, NY 10007  
tel.: (212) 637-3650

## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Friday, January 29, 2016 4:22 PM  
**To:** Nyman, Robert  
**Subject:** RE: Search hours needed for Pier 54 FOIA: Bob: I would say I spent 2 hours responding to this request. -rick

RE: Search hours needed for Pier 54 FOIA:

Bob:

I would say I spent 2 hours responding to this request.

-rick

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 balla.richard@epa.gov

---

**From:** Nyman, Robert  
**Sent:** Friday, January 29, 2016 11:50 AM  
**To:** Balla, Richard ; Matthews, Joan ; Shore, Berry ; Montella, Daniel  
**Subject:** Search hours needed for Pier 54 FOIA

Wanda Calderon has requested the number of hours that we spent putting together this package.

Please let me know today if possible, even if you are claiming zero.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Friday, January 29, 2016 11:54 AM  
**To:** Nyman, Robert  
**Subject:** RE: Search hours needed for Pier 54 FOIA

0

---

**From:** Nyman, Robert  
**Sent:** Friday, January 29, 2016 11:50 AM  
**To:** Balla, Richard ; Matthews, Joan ; Shore, Berry ; Montella, Daniel  
**Subject:** Search hours needed for Pier 54 FOIA

Wanda Calderon has requested the number of hours that we spent putting together this package.

Please let me know today if possible, even if you are claiming zero.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809



## Nyman, Robert

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:31 PM  
**To:** Nyman, Robert  
**Subject:** FW: pier 54 letter

---

**From:** Shore, Berry  
**Sent:** Tuesday, November 24, 2015 3:45 PM  
**To:** 'Martin, Nicholas (Schumer)'  
**Subject:** RE: pier 54 letter

Politico

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 24, 2015 3:09 PM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** RE: pier 54 letter

Thanks. Also, you mentioned receiving press inquiries – from whom?

---

**From:** Shore, Berry [<mailto:Shore.Berry@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 2:34 PM  
**To:** Martin, Nicholas (Schumer) <[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)>  
**Subject:** pier 54 letter

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Tuesday, November 03, 2015 10:43 PM  
**To:** Balla, Richard; Montella, Daniel; Nyman, Robert  
**Subject:** Pier 54 letter

Please send Berry a copy of the signed letter. Thanks.

Sent from my iPhone

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Tuesday, October 06, 2015 4:07 PM  
**To:** Nyman, Robert  
**Subject:** Accepted: Approach to comments on Pier 54

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, December 29, 2015 3:14 PM  
**To:** Calderon, Wanda; Isaac, Martha  
**Subject:** RE: EPA-R2-2016-002169

I did speak with the requester last week and we are collecting the material as electronic files. Once we are satisfied that we have everything, do we transmit them electronically to Martha?

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Calderon, Wanda  
**Sent:** Tuesday, December 22, 2015 1:04 PM  
**To:** Isaac, Martha  
**Cc:** Nyman, Robert  
**Subject:** RE: EPA-R2-2016-002169

Hi Martha,

In the future and for your convenience (cuz I'm slow), all communications can be found in the CASE FILE/CORRESPONDENCE or UPLOADED SUPPORTING DOCUMENTATION tab in FOIAonline. That's all he submitted, however, there were some communications back-n-forth when I sought assignment guidance during initial stages (found in FO).

Having said this, if we require additional processing information (narrowed scope, etc.), the subject matter expert should reach out to requester (preferably via phone and then memorialize for the record) in order to obtain details that would help further identify responsive records. Memorializing the conversation obviously is for history and clarity purposes. This also allows me to "stop clock" in the event we don't get to speak w/requester during the first attempt.

Please ensure I obtain CC of any follow up exchanges or simply upload into FO. thx

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Isaac, Martha  
**Sent:** Tuesday, December 22, 2015 11:02 AM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** EPA-R2-2016-002169

Hi Wanda - Bob Nyman of EPA's Watershed management Branch was assigned to review this FOIA. He is seeking additional information. Please let me know if the requester has provided anything other than the short description below. Thanks.

"All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive."

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 3:03 PM  
**To:** Arcaya, Alyssa; Isaac, Martha; Pabst, Douglas  
**Cc:** Balla, Richard; Nyman, Robert  
**Subject:** RE: ???

Thanks, I'll process out to CWD.

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 2:46 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alyssa@epa.gov](mailto:arcaya.alyssa@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, October 26, 2015 8:49 AM  
**To:** Laurita, Matthew  
**Subject:** RE: general conformity language

Cool, this is good. BTW, it's pier 54 on the west side. Thanks. Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Laurita, Matthew  
**Sent:** Monday, October 26, 2015 8:47 AM  
**To:** Nyman, Robert  
**Subject:** RE: general conformity language

Hi Bob,

Here's something a little more substantial you can use . I'm assuming the project location is NYC, so I referenced the air quality status of the area. if I'm wrong let me know.

--Matt

General conformity is a Clean Air Act requirement that ensures that federally funded, permitted, or licensed projects do not (1) cause or contribute to any new violation of any air quality standard, (2) increase the frequency or severity of any existing violation of any air quality standard, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Since the project location is within a non-attainment area for ozone and maintenance area for PM<sub>2.5</sub>, the project is subject to general conformity. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

---

**From:** Nyman, Robert  
**Sent:** Monday, October 26, 2015 7:57 AM  
**To:** Laurita, Matthew <[Laurita.Matthew@epa.gov](mailto:Laurita.Matthew@epa.gov)>  
**Subject:** FW: general conformity language

Hey Matt,

Thanks for helping. If you could please send me the more expanded language on conformity (this morning if possible), that would be great.

Bob

Robert Nyman

Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Lamster, Stephanie  
**Sent:** Friday, October 23, 2015 3:49 PM  
**To:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** Re: general conformity language

Hi Bob,

I thought I had saved an email with boiler plate GC text, but I can't seem to find it regardless of what terms I search under. I would give Matt Laurita a call. He is (or was before I went on maternity leave) on our mobile source team and is very helpful. His number is 212-637-3895. If he has change positions he will either be able to point you to the correct person, or just give you the language you are looking for. If you aren't able to get a response quickly, please let me know.

Best,  
Stephanie

---

**From:** Nyman, Robert  
**Sent:** Friday, October 23, 2015 3:26 PM  
**To:** Lamster, Stephanie  
**Subject:** general conformity language

Hi Stephanie,

We are just looking for a little more beef for the following comment on the Pier 54 Public Notice. If you have some boiler plate language, that would be great.

"USACE should make a general conformity determination with regard to air emissions during construction."

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Gratz, Jeff  
**Sent:** Monday, October 26, 2015 11:21 AM  
**To:** Montella, Daniel  
**Subject:** FW: New information re Corps PN NAN-1998-00290

Hi Dan - Do you have another email address to the person below.

- Jeff

-----Original Message-----

From: RiverCAC@aol.com [mailto:RiverCAC@aol.com]  
Sent: Monday, October 26, 2015 11:17 AM  
To: Gratz, Jeff <Gratz.Jeff@epa.gov>  
Subject: Re: New information re Corps PN NAN-1998-00290

thanks Jeff. the email to Steve.sinkevich@fws.gov bounced. Would you tell me what his new email is?</HTML>



## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Thursday, January 14, 2016 4:43 PM  
**To:** Nyman, Robert; Isaac, Martha  
**Subject:** Pier 55 FOIA response has been granted an extension until 2/1/16, e-mail from Wanda to follow. -rick

Pier 55 FOIA response has been granted an extension until 2/1/16, e-mail from Wanda to follow. -rick

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 balla.richard@epa.gov

## Nyman, Robert

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:26 PM  
**To:** Nyman, Robert  
**Subject:** FW: pier 54 letter

---

**From:** Martin, Nicholas (Schumer) [mailto:Nicholas\_Martin@schumer.senate.gov]  
**Sent:** Tuesday, November 24, 2015 3:09 PM  
**To:** Shore, Berry  
**Subject:** RE: pier 54 letter

Thanks. Also, you mentioned receiving press inquiries – from whom?

---

**From:** Shore, Berry [mailto:Shore.Berry@epa.gov]  
**Sent:** Tuesday, November 24, 2015 2:34 PM  
**To:** Martin, Nicholas (Schumer) <Nicholas\_Martin@schumer.senate.gov>  
**Subject:** pier 54 letter

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Thursday, October 29, 2015 3:47 PM  
**To:** Montella, Daniel; Matthews, Joan  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** RE: NEED RESPONSE ASAP - edits to draft EPA comments on Pier 54 app

Looks OK to me too.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Thursday, October 29, 2015 3:19 PM  
**To:** Matthews, Joan ; Nyman, Robert  
**Cc:** Gratz, Jeff ; Balla, Richard  
**Subject:** RE: NEED RESPONSE ASAP - edits to draft EPA comments on Pier 54 app

Looks fine to me

- Dan

---

**From:** Matthews, Joan  
**Sent:** Thursday, October 29, 2015 2:08 PM  
**To:** Montella, Daniel; Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** NEED RESPONSE ASAP - edits to draft EPA comments on Pier 54 app  
**Importance:** High

**Need response ASAP** – this will go in the briefing book, which is being compiled for the RA in PR by CEPD.

I have only a few edits – please let me know if they are ok. Feel free to change.  
Tx!

## Nyman, Robert

---

**From:** Switzer, Amanda M NAN <Amanda.M.Switzer@usace.army.mil>  
**Sent:** Monday, October 05, 2015 3:29 PM  
**Subject:** Public Notice NAN-1998-00290 by the Hudson River Park Trust for Pier 54 Replacement

Hello,

A public notice has been issued for a project within your expressed area of interest. The public notice for this project has been posted on the New York District Corps of Engineers' website:

File Number: NAN-1998-00290

Applicant: Hudson River Park Trust

Location: Foot of West 12th Street, New York City, Borough of Manhattan, New York County, New York Public Notice

Issued: October 2, 2015 Public Notice Expires: November 4, 2015

Please follow this link to view the public notice -

<http://www.nan.usace.army.mil/Missions/Regulatory/RegulatoryPublicNotices/tabid/4166/Article/621815/nan-1998-00290.aspx>

Note that you will need the Adobe Acrobat reader to view this document.

If you wish to provide electronic comments on this email you can reply to this email. If you wish to provide electronic comments on a different public notice, you can contact the New York District Corps of Engineers at:  
[cenan.publicnotice@usace.army.mil](mailto:cenan.publicnotice@usace.army.mil)

Thank You.

Amanda M. Switzer  
Project Manager  
Eastern Permits Section  
U.S. Army Corps of Engineers  
26 Federal Plaza, Room 1937  
New York, NY 10278-0090  
Phone: 917-790-8618  
Fax: 212-264-4260

## Nyman, Robert

---

**From:** Switzer, Amanda M NAN <Amanda.M.Switzer@usace.army.mil>  
**Sent:** Monday, October 05, 2015 3:29 PM  
**Subject:** Public Notice NAN-1998-00290 by the Hudson River Park Trust for Pier 54 Replacement

Hello,

A public notice has been issued for a project within your expressed area of interest. The public notice for this project has been posted on the New York District Corps of Engineers' website:

File Number: NAN-1998-00290

Applicant: Hudson River Park Trust

Location: Foot of West 12th Street, New York City, Borough of Manhattan, New York County, New York Public Notice

Issued: October 2, 2015 Public Notice Expires: November 4, 2015

Please follow this link to view the public notice -

<http://www.nan.usace.army.mil/Missions/Regulatory/RegulatoryPublicNotices/tabid/4166/Article/621815/nan-1998-00290.aspx>

Note that you will need the Adobe Acrobat reader to view this document.

If you wish to provide electronic comments on this email you can reply to this email. If you wish to provide electronic comments on a different public notice, you can contact the New York District Corps of Engineers at:  
[cenan.publicnotice@usace.army.mil](mailto:cenan.publicnotice@usace.army.mil)

Thank You.

Amanda M. Switzer  
Project Manager  
Eastern Permits Section  
U.S. Army Corps of Engineers  
26 Federal Plaza, Room 1937  
New York, NY 10278-0090  
Phone: 917-790-8618  
Fax: 212-264-4260

## Nyman, Robert

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:32 PM  
**To:** Nyman, Robert  
**Subject:** FW: Pier 54

---

**From:** Shore, Berry  
**Sent:** Friday, October 30, 2015 11:11 AM  
**To:** 'Martin, Nicholas (Schumer)'  
**Subject:** RE: Pier 54

Let me check with the water/wetlands folks here. Judith Enck is still in Puerto Rico and I don't think has had a chance to OK our comments.

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Friday, October 30, 2015 11:02 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** Pier 54

Any update?

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Wednesday, October 21, 2015 2:44 PM  
**To:** Nyman, Robert; Balla, Richard  
**Subject:** RE: pier 54

Note: A simple "time extension request" is completely independent of the Aquatic Resource of National Importance designation. However, we have to justify such a request and the Corps has to agree. Sending a "404(q) 3a" letter is not a "time extension request" *per se*, but it *in effect* gives ourselves an additional 25 days with which to respond. The catch is that to send a 404(q) 3a letter, we must state clearly that the project MAY have an adverse impact on an Aquatic Resource of National Importance. A 404(q) 3b letter must state clearly that the project WILL have an adverse impact on an Aquatic Resource of National Importance.

- Dan

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 20, 2015 4:08 PM  
**To:** Balla, Richard  
**Cc:** Montella, Daniel  
**Subject:** pier 54

Rick,

Attached are some bullets that could be put into an email to Joan.

Also attached is a modified draft letter.

Traci has Dan and I scheduled to talk to Jeff and Joan this Friday.

We should touch base before then on this.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Isaac, Martha  
**Sent:** Tuesday, December 22, 2015 11:02 AM  
**To:** Calderon, Wanda  
**Cc:** Nyman, Robert  
**Subject:** EPA-R2-2016-002169

Hi Wanda - Bob Nyman of EPA's Watershed management Branch was assigned to review this FOIA. He is seeking additional information. Please let me know if the requester has provided anything other than the short description below. Thanks.

"All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive."

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 3:03 PM  
**To:** Arcaya, Alyssa; Isaac, Martha; Pabst, Douglas  
**Cc:** Balla, Richard; Nyman, Robert  
**Subject:** RE: ???

Thanks, I'll process out to CWD.

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 2:46 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alysa@epa.gov](mailto:arcaya.alysa@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.



## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Monday, November 02, 2015 5:46 AM  
**To:** Montella, Daniel; Nyman, Robert  
**Subject:** Fwd: Pier 54 1/2 draft comments to RA: Bob & Dan: thanks for your attention in this, we'll see what happens. -rick

Fwd: Pier 54 1/2 draft comments to RA:

Bob & Dan:

thanks for your attention in this, we'll see what happens.

-rick

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

Begin forwarded message:

**From:** "Matthews, Joan" <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Date:** October 29, 2015 at 4:38:04 PM EDT  
**To:** "Balla, Richard" <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>, "Montella, Daniel" <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>, "Nyman, Robert" <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Cc:** "Gratz, Jeff" <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>  
**Subject:** Pier 54 1/2 draft comments to RA

This is the draft that I sent to the RA. She may request a briefing – will let you know. Thanks for drafting!  
Joan

## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Tuesday, January 19, 2016 5:40 AM  
**To:** Matthews, Joan  
**Cc:** Gratz, Jeff; Nyman, Robert; Montella, Daniel  
**Subject:** Joan, FYI, we requested/received an extension on the Pier 55 FOIA because Phyllis and Mitch were out last week...

Joan,

FYI, we requested/received an extension on the Pier 55 FOIA because Phyllis and Mitch were out last week...

...and we could not pose your question to them.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

## Nyman, Robert

---

**From:** Isaac, Martha  
**Sent:** Friday, December 18, 2015 8:25 AM  
**To:** Balla, Richard  
**Cc:** Calderon, Wanda; Nyman, Robert  
**Subject:** RE: I can't see the request these emails are referring to

Rick - The request was forwarded at 4:38pm on December 17 - tracking Number :EPA-R2-2016-002169 FOIA Online Request Due 1-15-16. Thanks.

---

**From:** Balla, Richard  
**Sent:** Thursday, December 17, 2015 6:15 PM  
**To:** Calderon, Wanda  
**Cc:** Arcaya, Alyssa; Isaac, Martha; Pabst, Douglas; Nyman, Robert  
**Subject:** I can't see the request these emails are referring to

I can't see the request these emails are referring to.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

On Dec 17, 2015, at 3:03 PM, Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)> wrote:

Thanks, I'll process out to CWD.

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 2:46 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alysa@epa.gov](mailto:arcaya.alysa@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.

## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 12:22 PM  
**To:** Ausubel, Seth; Nyman, Robert; Negron, Nesmarie; Tedesco, Mark; Montella, Daniel  
**Subject:** All, i had to head home during lunch. Dan/Bob: please work on the Pier 55 letter (more)

All, i had to head home during lunch.

Dan/Bob: please work on the Pier 55 letter: goal is to address Joan's question and get the letter thru Jeff and to RA asap TODAY.

I will call in for the NEP meeting @ 1pm

I will also call in for the staff meeting @ 2 today.

I will take leave 3:15-4:45; Nesmarie: can you act?

-rick

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

## Nyman, Robert

---

**From:** Gratz, Jeff  
**Sent:** Thursday, October 22, 2015 12:24 PM  
**To:** Matthews, Joan; Nyman, Robert; Balla, Richard; Montella, Daniel  
**Subject:** Fwd: urgent request

Sent from my iPhone

Begin forwarded message:

**From:** [RiverCAC@aol.com](mailto:RiverCAC@aol.com)  
**Date:** October 22, 2015 at 12:12:06 PM EDT  
**To:** [enck.judith@epa.gov](mailto:enck.judith@epa.gov), [Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)  
**Cc:** <[cleanaircmpgn02@aol.com](mailto:cleanaircmpgn02@aol.com)>, <[brentblackwelder@yahoo.com](mailto:brentblackwelder@yahoo.com)>, <[BunnyGabel@gmail.com](mailto:BunnyGabel@gmail.com)>, <[grussian@nypirg.org](mailto:grussian@nypirg.org)>, <[jmylod@aol.com](mailto:jmylod@aol.com)>, <[lshapiro@rffund.org](mailto:lshapiro@rffund.org)>, <[mizeman@nrdc.org](mailto:mizeman@nrdc.org)>, <[allisontupper@verizon.net](mailto:allisontupper@verizon.net)>  
**Subject:** urgent request

U.S. Environmental Protection Agency (EPA)  
Region 2 Administrator Judith Enck  
Chief, Water Programs, EPA Region 2Jeff Gratz

Dear Ms. Enck and Mr. Gratz,

Please do not submit EPA comments on the version of Army Corps Public Notice (PN) NAN-1998-00290 issued (or re-issued) in October 2015 until Clean Air Campaign Inc. has sent you new information (in the next few days). NYS Assemblymember Deborah Glick has sent the Corps a letter requesting a deadline extension for PN NAN-1998-00290 of at least one week beyond the current 11/4/15 Expiration Date.

Much more than any potential Corps authorization for Pier 54/Pier 55/Diller Island (bad as that would be) is at stake. Language that almost no member of the public would be likely to understand is buried in the Corps' "Public Notice"--language that would permit the degradation and ultimate destruction of the entire 490-acre nearshore habitat illegally authorized by Corps Permit Number NAN-1998-00290 more than 15 years ago. The information to be submitted to you will help explain this.

Please let me know what EPA intends to do, and please send us a copy of any EPA correspondence with the Corps related to PN NAN-1998-00290.

Thank you.

Sincerely,

Marcy Benstock, Executive Director, Clean Air Campaign Inc.

## Nyman, Robert

---

**From:** Gratz, Jeff  
**Sent:** Thursday, October 22, 2015 12:24 PM  
**To:** Matthews, Joan; Nyman, Robert; Balla, Richard; Montella, Daniel  
**Subject:** Fwd: urgent request

Sent from my iPhone

Begin forwarded message:

**From:** [RiverCAC@aol.com](mailto:RiverCAC@aol.com)  
**Date:** October 22, 2015 at 12:12:06 PM EDT  
**To:** [enck.judith@epa.gov](mailto:enck.judith@epa.gov), [Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)  
**Cc:** <[cleanaircmpgn02@aol.com](mailto:cleanaircmpgn02@aol.com)>, <[brentblackwelder@yahoo.com](mailto:brentblackwelder@yahoo.com)>, <[BunnyGabel@gmail.com](mailto:BunnyGabel@gmail.com)>, <[grussian@nypirg.org](mailto:grussian@nypirg.org)>, <[jmylod@aol.com](mailto:jmylod@aol.com)>, <[lshapiro@rffund.org](mailto:lshapiro@rffund.org)>, <[mizeman@nrdc.org](mailto:mizeman@nrdc.org)>, <[allisontupper@verizon.net](mailto:allisontupper@verizon.net)>  
**Subject:** urgent request

U.S. Environmental Protection Agency (EPA)  
Region 2 Administrator Judith Enck  
Chief, Water Programs, EPA Region 2Jeff Gratz

Dear Ms. Enck and Mr. Gratz,

Please do not submit EPA comments on the version of Army Corps Public Notice (PN) NAN-1998-00290 issued (or re-issued) in October 2015 until Clean Air Campaign Inc. has sent you new information (in the next few days). NYS Assemblymember Deborah Glick has sent the Corps a letter requesting a deadline extension for PN NAN-1998-00290 of at least one week beyond the current 11/4/15 Expiration Date.

Much more than any potential Corps authorization for Pier 54/Pier 55/Diller Island (bad as that would be) is at stake. Language that almost no member of the public would be likely to understand is buried in the Corps' "Public Notice"--language that would permit the degradation and ultimate destruction of the entire 490-acre nearshore habitat illegally authorized by Corps Permit Number NAN-1998-00290 more than 15 years ago. The information to be submitted to you will help explain this.

Please let me know what EPA intends to do, and please send us a copy of any EPA correspondence with the Corps related to PN NAN-1998-00290.

Thank you.

Sincerely,

Marcy Benstock, Executive Director, Clean Air Campaign Inc.

## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Tuesday, January 26, 2016 1:30 PM  
**To:** Feinmark, Phyllis  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** Fwd: FYI: Inside EPA 404 clip: re our pier 55 decision

Fwd: FYI: Inside EPA 404 clip: re our pier 55 decision

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

Begin forwarded message:

**From:** "Brandt, Peter" <[Brandt.Peter@epa.gov](mailto:Brandt.Peter@epa.gov)>  
**Date:** January 26, 2016 at 9:58:00 AM EST  
**To:** "Balla, Richard" <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>, "Matthews, Joan" <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>, "Gratz, Jeff" <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>, "Montella, Daniel" <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>, "Nyman, Robert" <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>, "Martin, John" <[Martin.JohnJ@epa.gov](mailto:Martin.JohnJ@epa.gov)>, "Shore, Berry" <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>, "Pabst, Douglas" <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>, "Anderson, Kate" <[Anderson.Kate@epa.gov](mailto:Anderson.Kate@epa.gov)>, "Jackson, Wayne" <[Jackson.Wayne@epa.gov](mailto:Jackson.Wayne@epa.gov)>  
**Subject:** FYI: Inside EPA 404 clip.

<http://insideepa.com/daily-news/eab-case-tests-epa-reversal-concerns-over-corps-404-water-permit>

## Nyman, Robert

---

**From:** Shore, Berry  
**Sent:** Monday, February 01, 2016 9:42 AM  
**To:** Balla, Richard  
**Cc:** Nyman, Robert  
**Subject:** FW: Letter to Army Corps on Pier 54

Ric: Please note this clarification and explanation to the November 24, 2015 10:09 AM message, below I sent to Nicholas Martin of Senator's office.

The "pressure" referred to in the message relates to the administrative process of getting the letter finalized in a timely fashion, it has nothing to do with the substance of the letter.

A major part of my function is to ensure that correspondence is prepared and finalized in a timely fashion.

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:26 PM  
**To:** Nyman, Robert  
**Subject:** FW: Letter to Army Corps on Pier 54

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 24, 2015 11:24 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54

Give me till 1 or 2, thanks!

---

**From:** Shore, Berry [<mailto:Shore.Berry@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 11:01 AM  
**To:** Martin, Nicholas (Schumer) <[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54

Thanks Nick!

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 24, 2015 11:00 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54

I'll get back to you soon.

---

**From:** Shore, Berry [<mailto:Shore.Berry@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 10:09 AM  
**To:** Martin, Nicholas (Schumer) <[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)>  
**Subject:** Letter to Army Corps on Pier 54



Nick:

Left a VM for you on this a short time ago.

I am under some pressure to move the letter out today.

Everyone here thinks the letter will offer no impediments for the project to moving forward.

Berry Shore, Intergovernmental Liaison  
Region 2, USEPA  
290 Broadway, 26<sup>th</sup> Floor  
New York, NY 10007  
tel.: (212) 637-3650

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Tuesday, November 03, 2015 4:13 PM  
**To:** Balla, Richard; Montella, Daniel; Nyman, Robert; Shore, Berry  
**Cc:** Gratz, Jeff  
**Subject:** Pier 54 letter

**Importance:** High

This letter requesting an additional 25 days to review the project (from 11/19) will go on the pen tomorrow. Traci will let y'all know when it is done.

Joan

## Nyman, Robert

---

**From:** Isaac, Martha  
**Sent:** Tuesday, December 22, 2015 2:04 PM  
**To:** Calderon, Wanda  
**Cc:** Nyman, Robert  
**Subject:** RE: EPA-R2-2016-002169

Okay. Thanks, Wanda. As per your email below, Bob Nyman will reach out to the requester.

---

**From:** Calderon, Wanda  
**Sent:** Tuesday, December 22, 2015 1:04 PM  
**To:** Isaac, Martha  
**Cc:** Nyman, Robert  
**Subject:** RE: EPA-R2-2016-002169

Hi Martha,

In the future and for your convenience (cuz I'm slow), all communications can be found in the CASE FILE/CORRESPONDENCE or UPLOADED SUPPORTING DOCUMENTATION tab in FOIAonline. That's all he submitted, however, there were some communications back-n-forth when I sought assignment guidance during initial stages (found in FO).

Having said this, if we require additional processing information (narrowed scope, etc.), the subject matter expert should reach out to requester (preferably via phone and then memorialize for the record) in order to obtain details that would help further identify responsive records. Memorializing the conversation obviously is for history and clarity purposes. This also allows me to "stop clock" in the event we don't get to speak w/requester during the first attempt.

Please ensure I obtain CC of any follow up exchanges or simply upload into FO. thx

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Isaac, Martha  
**Sent:** Tuesday, December 22, 2015 11:02 AM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** EPA-R2-2016-002169

Hi Wanda - Bob Nyman of EPA's Watershed management Branch was assigned to review this FOIA. He is seeking additional information. Please let me know if the requester has provided anything other than the short description below. Thanks.

"All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive."

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 3:03 PM  
**To:** Arcaya, Alyssa; Isaac, Martha; Pabst, Douglas  
**Cc:** Balla, Richard; Nyman, Robert  
**Subject:** RE: ???

Thanks, I'll process out to CWD.

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 2:46 PM  
**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alyssa@epa.gov](mailto:arcaya.alyssa@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:29 PM  
**To:** Balla, Richard; Nyman, Robert  
**Subject:** RE: Pier 54 comment period extension: Will our letter give us 25 days from Nov 4 then, or from Nov 19th?

From the 19<sup>th</sup>

<http://water.epa.gov/lawsregs/guidance/wetlands/dispmoa.cfm>

### FIELD LEVEL PROCEDURES

(a) Within the basic or extended comment period the Regional Administrator (or designee) must notify the District Engineer by letter that in the opinion of EPA the project may result in substantial and unacceptable impacts to aquatic resources of national importance as defined in paragraph 1 of this Part.

(b) **For those individual permit cases identified in paragraph 3(a), within 25 calendar days after the end of the basic or extended comment period the Regional Administrator must notify the District Engineer by letter** (signed by the Regional Administrator) that in EPA's opinion the discharge will have a substantial and unacceptable impact on aquatic resources of national importance. The opinion will clearly state in detail: (1) why there will be substantial and unacceptable impacts to aquatic resource of national importance as defined in paragraph 1 of this Part and; (2) why the specific permit must be modified, conditioned, or denied to protect the aquatic resource of natural importance. The opinion, which should explain how the agency determination was made, should be based on site specific information and relate directly to matters with EPA's authority and expertise. A signed copy of the EPA letter should be immediately faxed to the Corps regulatory project manager.

- Dan

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 2:26 PM  
**To:** Nyman, Robert; Montella, Daniel  
**Subject:** DAN: Pier 54 comment period extension: Will our letter give us 25 days from Nov 4 then, or from Nov 19th?

Dan:

Pier 54 comment period extension:

Will our letter give us 25 days from Nov 4 then, or from Nov 19th?

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 2:16 PM  
**To:** Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>; Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Matthews, Joan <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Subject:** RE: Pier 54

Tom Creamer just called a few minutes ago and told me. Does this change what our current plans are?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:13 PM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>; Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Matthews, Joan <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Subject:** RE: Pier 54

That's news to me. We will follow up with the corps

- Dan

---

**From:** Shore, Berry  
**Sent:** Tuesday, November 03, 2015 2:06 PM  
**To:** Montella, Daniel; Balla, Richard; Matthews, Joan  
**Subject:** FW: Pier 54

From Schumer's office.

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 03, 2015 10:44 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** Pier 54

FYI, Army Corps told me yesterday that the comment period was extended to Nov. 19<sup>th</sup>. Do let me know if anything changes on your end.

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)



**From:** [Nyman, Robert](#)  
**To:** [Balla, Richard](#)  
**Subject:** RE: did you owe something to Jeff on pier 55 air quality?  
**Date:** Tuesday, January 05, 2016 7:53:00 AM

---

I did get back to Jeff verbally - here is what we discussed.

I spoke to Amanda Switzer at the Corps. She said the process is for the Corps to pass all PN comments to the applicant for response. Our (boilerplate) comments on the air issue were included. The applicant should submit information back to the Corps that will allow the Corps to do the analysis that we requested. There is no timeline for the applicant to respond and as of last week when I spoke to Amanda, they had not received anything.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Tuesday, January 05, 2016 7:40 AM  
**To:** Nyman, Robert  
**Subject:** Bob: did you owe something to Jeff on pier 55 air quality?  
Bob: did you owe something to Jeff on pier 55 air quality?  
Just checking my notes from last week...  
If you already provided something, can I get a copy?

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway,  
NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)



## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Tuesday, February 02, 2016 5:49 AM  
**To:** Shore, Berry  
**Cc:** Nyman, Robert  
**Subject:** Re: Letter to Army Corps on Pier 54: Berry: yes...

Re: Letter to Army Corps on Pier 54:

Berry:

Yes, that is how i took what you said, but thanks fir clarifying....

-rick

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

On Feb 1, 2016, at 9:41 AM, Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)> wrote:

Ric: Please note this clarification and explanation to the November 24, 2015 10:09 AM message, below I sent to Nicholas Martin of Senator's office.

The "pressure" referred to in the message relates to the administrative process of getting the letter finalized in a timely fashion, it has nothing to do with the substance of the letter.

A major part of my function is to ensure that correspondence is prepared and finalized in a timely fashion.

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:26 PM  
**To:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** FW: Letter to Army Corps on Pier 54

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 24, 2015 11:24 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54  
Give me till 1 or 2, thanks!

---

**From:** Shore, Berry [<mailto:Shore.Berry@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 11:01 AM  
**To:** Martin, Nicholas (Schumer) <[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54  
[Thanks Nick!](#)

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 24, 2015 11:00 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** RE: Letter to Army Corps on Pier 54  
I'll get back to you soon.

---

**From:** Shore, Berry [<mailto:Shore.Berry@epa.gov>]  
**Sent:** Tuesday, November 24, 2015 10:09 AM

**To:** Martin, Nicholas (Schumer) <[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)>

**Subject:** Letter to Army Corps on Pier 54

Nick:

Left a VM for you on this a short time ago.

I am under some pressure to move the letter out today.

Everyone here thinks the letter will offer no impediments for the project to moving forward.

Berry Shore, Intergovernmental Liaison

Region 2, USEPA

290 Broadway, 26<sup>th</sup> Floor

New York, NY 10007

tel.: (212) 637-3650

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Friday, January 29, 2016 11:52 AM  
**To:** Nyman, Robert  
**Subject:** RE: Search hours needed for Pier 54 FOIA

I spent 1 hour

- Dan

---

**From:** Nyman, Robert  
**Sent:** Friday, January 29, 2016 11:50 AM  
**To:** Balla, Richard; Matthews, Joan; Shore, Berry; Montella, Daniel  
**Subject:** Search hours needed for Pier 54 FOIA

Wanda Calderon has requested the number of hours that we spent putting together this package.

Please let me know today if possible, even if you are claiming zero.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:29 PM  
**To:** Nyman, Robert  
**Subject:** FW: Pier 54

---

**From:** Martin, Nicholas (Schumer) [mailto:[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Friday, October 30, 2015 11:02 AM  
**To:** Shore, Berry  
**Subject:** Pier 54

Any update?

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)

## Nyman, Robert

---

**From:** Shore, Berry  
**Sent:** Tuesday, December 29, 2015 12:29 PM  
**To:** Nyman, Robert  
**Subject:** FW: Pier 54

---

**From:** Martin, Nicholas (Schumer) [mailto:[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 03, 2015 10:44 AM  
**To:** Shore, Berry  
**Subject:** Pier 54

FYI, Army Corps told me yesterday that the comment period was extended to Nov. 19<sup>th</sup>. Do let me know if anything changes on your end.

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Wednesday, January 06, 2016 9:53 AM  
**To:** Nyman, Robert; Cantilli, John; Balla, Richard  
**Subject:** FW: For fun....

And so it goes. Below is the 1989 vision

- Dan

## Post-Westway Plan Offered By Panel for Hudson Shore

By DAVID W. DUNLAP

Published: November 1, 1989

•

An embryonic, post-Westway plan for the Hudson River shore in Manhattan - four large coves interspersed with even larger areas for recreational, commercial or residential development - was presented yesterday by the high-level West Side Waterfront Panel.

The plan raised the possibility of new buildings on platforms over the Hudson, along Route 9A, which is to replace the West Side Highway. Three months ago, the panel ruled out landfill, which was one of the many disputed features of the earlier Westway highway project that led to its scrapping in 1985.

Members of the panel, representing New York City and the state, stressed yesterday that their new plan was not final. Rather, they said, it is meant to be a point of departure for the public debate that will shape the planning of hundreds of waterfront acres from Battery Park City to 59th Street. Emphasis on Amenities

If debate is what the panel members sought, they could not have been disappointed by yesterday's hearing at the World Trade Center. Their plan was denounced as soon as it was announced, particularly for the development potential that would be opened by the areas between the coves.

But the panel chose to emphasize the generosity of public amenities rather than the prospect of private profit. "The basic principles we tried to develop were maximum open space and maximum public use," said Michael J. Del Giudice, the panel chairman and a partner at Lazard Freres & Company.

One panel member, Tom Fox, executive director of the Neighborhood Open Space Coalition, said in reference to the coves, "The fact that we have locked in 20 percent of the river forever is a good starting point." The panel's executive director, Nancy K. Goell, said the coves "may grow larger but won't grow smaller" in the planning process.

Panel members were appointed last year by Gov. Mario M. Cuomo, Mayor Edward I. Koch and the Manhattan Borough President, David N. Dinkins. They are charged with developing a plan for land use and an esplanade to accompany Route 9A, most of which would be a six-lane road. Several Fronts at Once

The overall highway project is being created on several fronts at once. The State Transportation Department is planning the roadway while Mr. Del Giudice's committee goes through public meetings leading to a decision next February. Actual construction would not begin until well into the 1990's.

Under the plan shown yesterday to community leaders, elected officials, planners, architects and engineers, Route 9A would be accompanied by an esplanade about 130 feet wide in most places, with strips of parkland flanked by pedestrian and bicycle paths.

The western ends of major crosstown streets - Chambers, Canal, Christopher, 14th, 23d, 34th and 42d - would be marked on the esplanade with "design features" like fountains, sculptures or columns. 'Front Doors' on the Water

The coves, called basins, would extend from the bulkhead line at the shore to the pierhead line in the river. TriBeCa Basin would run roughly from Laight to Watts Streets; Village Basin, from Perry to Jane Streets; Chelsea Basin, from 22d to 24th Streets, and Convention Center Basin, from 29th to 34th Streets.

"The basins will be the front doors of the communities on the water," said Gary Hack of Carr, Lynch, Hack & Sandell, planning and design consultants to the waterfront panel. He said it might be appropriate to create a naturalistic shoreline in some places, which he called a "soft edge."

But what attracted more attention than the coves were the "active use areas," as yet vaguely defined, which also extend to the pierhead line. The uses may be waterborne or based on piers or platforms.

Of the 316 acres from Battery Park City to Pier 84 (44th Street), pierhead to bulkhead, about 75 acres would be given over to basins and about 241 acres to active-use areas. To illustrate the kinds of things that might be built in such areas, Mr. Hack showed a slide of the Rowes Wharf development on the Boston waterfront, a large office, hotel and condominium complex. 'Commercial and Intense'

After his presentation, members of the audience commented. "I was struck by the picture of Rowes Wharf," said Linda Davidoff, executive director of the private Parks Council. "It looked dense, tall, commercial and intense."

Marcy Benstock, executive director of the Clean Air Campaign, said: "Whether it's called a soft edge or an active-use area or any other of the new words that have been made up, the leading groups who opposed Westway strongly oppose any intrusion into this area of the Hudson River."

Mr. Dinkins's chief of staff, Barbara Fife, a waterfront panel member, was quick to object. "I don't think those kind of loaded statements help this process," she told Ms. Benstock.

Sylvia Deutsch, chairwoman of the City Planning Commission, who is also a member of the panel, said:  
"What continually distresses me is the consistent, persistent level of suspicion. To assume we have a hidden agenda will be harmful to an open dialogue."

---

**From:** Knutson, Lingard  
**Sent:** Wednesday, January 06, 2016 8:18 AM  
**To:** Montella, Daniel  
**Subject:** For fun....

## Lawsuit accuses Hudson River Park Trust of misleading state lawmakers with proposal for Pier 54 renovation

BY [BARBARA ROSS](#)

NEW YORK DAILY NEWS

Updated: Wednesday, January 6, 2016, 12:05 AM

- [A](#)

- [A](#)

- [A](#)

facebook

- 

- [email](#)

SHARE THIS URL





[JULIA XANTHOS/NEW YORK DAILY NEWS](#)

**The City Club for New York is suing the Hudson River Park Trust, which apparently claimed it only intended to widen the decrepit existing Pier 54 at the foot of W. 13th St.**

A non-profit group that runs a park along Manhattan's Hudson River duped state lawmakers into allowing a huge new concert venue on stilts to be built, a West Side assemblywoman alleges in a new court filing.

Assemblywoman Deborah Glick (D-Manhattan) says in an affidavit that she never would have approved the proposal and doubts her colleagues would have either if they knew the Hudson River Park Trust intended to replace the crumbling Pier 54 with a huge elevated island over an estuary between Piers 54 and 56.

The City Club of New York is suing the trust in Manhattan Supreme Court, arguing that the project needs a formal Environmental Impact Statement and that the trust "deceived" the legislature into approving it by claiming that it only intended to widen the decrepit existing Pier 54 at foot of W. 13th St.

#### **GOOGLE TO ANCHOR \$350M REDEVELOPMENT OF MANHATTAN'S PIER 57**

The new project — dubbed Diller Island — is being funded largely by a \$130 million donation from businessman Barry Diller and his wife Diane von Furstenberg.



AP

**The new project, dubbed Diller Island, is being funded largely by a \$130 million donation from businessman Barry Diller and his wife, designer Diane von Furstenberg.**

Glick says in a recently filed affidavit that she did not intend to get involved in the lawsuit until she read an affidavit by the HRPT executive director Madelyn Wils who "implies" that the legislature provided an "endorsement" of the plan when it passed a bill to give the trust the power to build the island.

"That implication is wrong," Glick said. "At the time the Amendment was being considered, the HRPT led myself and other legislators to believe that its plan was to make minor changes to the then-existing Pier 54. ... HRPT's intention to build an entirely new, large structure in a different location was never discussed."

Glick, who co-sponsored the bill, says Wils and her staff "showed me sketches of what the new pier might look like. They showed me a drawing of a pier that was short and wide and centered over Pier 54's existing footprint."

"Ms. Wils states in her affidavit that the new pier's changed location was never controversial. If that is true, it is only because HRPT did not disclose to the Assembly its intention to location the project between Piers 54 and 56," she says.



AP

**City Club lawyer Richard Emery insisted Tuesday that lawmakers never knew the project would partially cover the footprints of Piers 54 and 56 — plus all the space between the two piers.**

HRPT spokesman James Yolles issued a statement, saying that the “reconstructed pier is designed to conform with size, shape and dimensional limitations prescribed in the 2013 legislation.”

The legislation permitted the Trust to “go beyond the footprint” of the existing Pier 54 — and set a 150,000 square foot limit.

The former pier was 84,300 square feet.

City Club lawyer Richard Emery insisted Tuesday that lawmakers never knew the project would partially cover the footprints of Piers 54 and 56 — and all the space in between.

But Wils in her affidavit said Pier 54’s replacement has to be built on stilts — 15 feet above the high water mark — to conform with new federal regulations adopted after Superstorm Sandy blasted through the city three years ago.

Lingard Knutson  
Sr. Transportation and Energy Environmental Analyst

U.S. Environmental Protection Agency, Region 2  
290 Broadway, 25<sup>th</sup> Floor  
New York, NY  
(212) 637-3747



## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Wednesday, November 25, 2015 7:23 PM  
**To:** Matthews, Joan; Gratz, Jeff; Nyman, Robert; Shore, Berry; Martin, John; Brandt, Peter; Negrón, Nesmarie; Winfield, Richard  
**Cc:** Montella, Daniel  
**Subject:** EPA's 11-24-15 Pier 55 letter to the Corps in item in News Clips circulated by Elias earlier today...

EPA's 11-24-15 Pier 55 letter to the Corps in item in News Clips circulated by Elias earlier today...

-rick

Note: i thought i had sent this earlier today, but i did not see it in my sent box so i am sending again.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

### **Proposed Barry Diller Park on the Hudson Clears Regulatory Hurdle**

**‘Based on further review of this material, the EPA withdraws those concerns’**

Politico

November 25, 2015

By: Dana Rubinstein

Barry Diller’s vision for an undulating park on a pier in Hudson River Park may strike some litigants as environmentally suspect, but on Tuesday the Environmental Protection Agency said it has no real complaints.

In a letter, the chief of the EPA’s watershed management branch, Richard Balla, rescinded the agency’s November 4 preliminary finding that “the proposed project may result in unacceptable impacts to an aquatic resource of national importance.”

“Based on further review of this material, the EPA withdraws those concerns,” he wrote.

The EPA’s decision means that that one potential barrier to Diller’s riverside dreams has been lifted.

A year ago, Diller and his wife, fashion designer Diane von Furstenberg, announced they would spend \$113 million to build a fanciful 2.4-acre park on a pier west of [13th Street](#), in the Hudson River.

The park was designed to replace Pier 54, which was crumbling into the water and has since been removed.

The Diller plan represented the largest single private donation to a park in New York City history.

It also garnered a lawsuit.

In June, the City Club of New York lodged a complaint in Manhattan Supreme Court arguing that Diller and the Trust had engaged in a “secretive process designed to reach a preordained outcome that lacked the transparency required by state law and was not designed to elicit meaningful public scrutiny.” The litigants also argued the new plan, known as Pier55, merited more environmental view, a concern the EPA also shared in its original November 4 letter, the one that has since been withdrawn.

The EPA did, however, leave the Trust with some requests, among them that the designers try to reduce the amount of shade on the water, for the sake of fish habitat.

The Hudson River Park Trust, the city- and state-run partnership that manages the park, declined comment.

Tom Fox, who ran the Trust's predecessor and joined the City Club's lawsuit, said he disagreed with the EPA's findings.

"We think it's a wonderful idea, but it's in the wrong place," he said. "We should be focused on finishing the park that everyone has signed on to for the last 20 years before we start major modifications with what some might call vanity projects."

A rendering of the proposed island project. (Pier55, Inc./Heatherwick Sts Imp

Begin forwarded message:

**From:** "Rodriguez, Elias" <[Rodriguez.Elias@epa.gov](mailto:Rodriguez.Elias@epa.gov)>  
**Date:** November 25, 2015 at 10:25:03 AM EST  
**To:** "R2 EPA Region 2 (EPA Staff)" <[R2\\_EPA\\_Region\\_2\\_EPA\\_Staff@epa.gov](mailto:R2_EPA_Region_2_EPA_Staff@epa.gov)>  
**Subject:** News Clips

### **Proposed Barry Diller Park on the Hudson Clears Regulatory Hurdle**

**'Based on further review of this material, the EPA withdraws those concerns'**

Politico

November 25, 2015

By: Dana Rubinstein

Barry Diller's vision for an undulating park on a pier in Hudson River Park may strike some litigants as environmentally suspect, but on Tuesday the Environmental Protection Agency said it has no real complaints.

In a letter, the chief of the EPA's watershed management branch, Richard Balla, rescinded the agency's November 4 preliminary finding that "the proposed project may result in unacceptable impacts to an aquatic resource of national importance."

"Based on further review of this material, the EPA withdraws those concerns," he wrote.

The EPA's decision means that that one potential barrier to Diller's riverside dreams has been lifted.

A year ago, Diller and his wife, fashion designer Diane von Furstenberg, announced they would spend \$113 million to build a fanciful 2.4-acre park on a pier west of 13th Street, in the Hudson River.

The park was designed to replace Pier 54, which was crumbling into the water and has since been removed.

The Diller plan represented the largest single private donation to a park in New York City history.

It also garnered a lawsuit.

In June, the City Club of New York lodged a complaint in Manhattan Supreme Court arguing that Diller and the Trust had engaged in a “secretive process designed to reach a preordained outcome that lacked the transparency required by state law and was not designed to elicit meaningful public scrutiny.” The litigants also argued the new plan, known as Pier55, merited more environmental view, a concern the EPA also shared in its original November 4 letter, the one that has since been withdrawn.

The EPA did, however, leave the Trust with some requests, among them that the designers try to reduce the amount of shade on the water, for the sake of fish habitat.

The Hudson River Park Trust, the city- and state-run partnership that manages the park, declined comment.

Tom Fox, who ran the Trust’s predecessor and joined the City Club's lawsuit, said he disagreed with the EPA’s findings.

“We think it’s a wonderful idea, but it’s in the wrong place,” he said. “We should be focused on finishing the park that everyone has signed on to for the last 20 years before we start major modifications with what some might call vanity projects.”

A rendering of the proposed island project. (Pier55, Inc./Heatherwick St

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 11:56 AM  
**To:** Nyman, Robert  
**Subject:** RE: some developments on the pier 55 comment letter...

Looks fine. I was not able yesterday to see Joan's comment about the "...If such structures..." sentence. I wrote it. It's not necessary and not worth explaining. Dump it.

- Dan

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 10:38 AM  
**To:** Montella, Daniel  
**Subject:** FW: some developments on the pier 55 comment letter...

Dan,

I made the minor edits noted, but also removed the highlighted sentence that starts off, "If such structures proliferate..." I'm not sure if you added that sentence or if someone else did. Are you OK with it disappearing?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Monday, November 02, 2015 5:53 PM  
**To:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Cc:** Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>  
**Subject:** Bob: some developments on the pier 55 comment letter...

Bob: some developments on the pier 55 comment letter...

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

Begin forwarded message:

**From:** "Matthews, Joan" <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Date:** November 2, 2015 at 5:00:25 PM EST  
**To:** "Montella, Daniel" <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>, "Balla, Richard" <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>  
**Cc:** "Gratz, Jeff" <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>  
**Subject:** pier 55 draft comments nov 2 404q -3a.docx



Ok – thanks very much Dan. Minor edits and a question for something to be made more explicit. Please make the change, run it by Jeff, and put it through the concurrence process. I will be in the office tomorrow afternoon, but feel free, Jeff, to send up first thing in the a.m.

Joan

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Tuesday, November 03, 2015 12:42 PM  
**To:** Nyman, Robert  
**Cc:** Gratz, Jeff; Montella, Daniel; Balla, Richard  
**Subject:** Pier 54 letter

**Importance:** High

Looks good – please prepare final for concurrence ASAP. RA is leaving at 2pm today. In DC tomorrow.

Thanks!

Joan

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Wednesday, October 28, 2015 9:54 AM  
**To:** Balla, Richard; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** RE: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Coming along nicely. I have more edits – I think we need to set up the whole permit modification issue – that the trust is asking for a permit mod and explain from what. Let's tell that story a bit.  
It's on my table, so someone stop by and pick up. I hope to see the next version today.  
Thanks.

---

**From:** Balla, Richard  
**Sent:** Tuesday, October 27, 2015 4:55 PM  
**To:** Matthews, Joan; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Thanks to Bob for his work on it, as well as Dan for his input.

-rick

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 27, 2015 4:43 PM  
**To:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>  
**Subject:** Pier 54 draft letter without "improvements" sentence.

Pier 54 draft letter without "improvements" sentence.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 2:26 PM  
**To:** Nyman, Robert; Montella, Daniel  
**Subject:** DAN: Pier 54 comment period extension: Will our letter give us 25 days from Nov 4 then, or from Nov 19th?

Dan:

Pier 54 comment period extension:

Will our letter give us 25 days from Nov 4 then, or from Nov 19th?

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 balla.richard@epa.gov

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 2:16 PM  
**To:** Montella, Daniel ; Shore, Berry  
**Cc:** Balla, Richard ; Matthews, Joan  
**Subject:** RE: Pier 54

Tom Creamer just called a few minutes ago and told me. Does this change what our current plans are?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:13 PM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>; Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Matthews, Joan <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Subject:** RE: Pier 54

That's news to me. We will follow up with the corps

- Dan

---

**From:** Shore, Berry  
**Sent:** Tuesday, November 03, 2015 2:06 PM  
**To:** Montella, Daniel; Balla, Richard; Matthews, Joan  
**Subject:** FW: Pier 54

From Schumer's office.

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 03, 2015 10:44 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** Pier 54

FYI, Army Corps told me yesterday that the comment period was extended to Nov. 19<sup>th</sup>. Do let me know if anything changes on your end.

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:26 PM  
**To:** Nyman, Robert; Shore, Berry  
**Cc:** Balla, Richard; Matthews, Joan  
**Subject:** RE: Pier 54

Not really, if we send a "3a" letter, our follow-up letter would be due 25 days after the end of the extended comment period. We can send it today or anytime before 11/19.

- Dan

(a) Within the basic or extended comment period the Regional Administrator (or designee) must notify the District Engineer by letter that in the opinion of EPA the project may result in substantial and unacceptable impacts to aquatic resources of national importance as defined in paragraph 1 of this Part.

(b) **For those individual permit cases identified in paragraph 3(a), within 25 calendar days after the end of the basic or extended comment period** the Regional Administrator must notify the District Engineer by letter (signed by the Regional Administrator) that in EPA's opinion the discharge will have a substantial and unacceptable impact on aquatic resources of national importance. The opinion will clearly state in detail: (1) why there will be substantial and unacceptable impacts to aquatic resource of national importance as defined in paragraph 1 of this Part and; (2) why the specific permit must be modified, conditioned, or denied to protect the aquatic resource of natural importance. The opinion, which should explain how the agency determination was made, should be based on site specific information and relate directly to matters with EPA's authority and expertise. A signed copy of the EPA letter should be immediately faxed to the Corps regulatory project manager.

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 2:16 PM  
**To:** Montella, Daniel; Shore, Berry  
**Cc:** Balla, Richard; Matthews, Joan  
**Subject:** RE: Pier 54

Tom Creamer just called a few minutes ago and told me. Does this change what our current plans are?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:13 PM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Cc:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>; Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Matthews, Joan

<[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>

**Subject:** RE: Pier 54

That's news to me. We will follow up with the corps

- Dan

---

**From:** Shore, Berry  
**Sent:** Tuesday, November 03, 2015 2:06 PM  
**To:** Montella, Daniel; Balla, Richard; Matthews, Joan  
**Subject:** FW: Pier 54

From Schumer's office.

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 03, 2015 10:44 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** Pier 54

FYI, Army Corps told me yesterday that the comment period was extended to Nov. 19<sup>th</sup>. Do let me know if anything changes on your end.

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)

## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Tuesday, November 03, 2015 2:13 PM  
**To:** Shore, Berry  
**Cc:** Nyman, Robert; Balla, Richard; Matthews, Joan  
**Subject:** RE: Pier 54

That's news to me. We will follow up with the corps

- Dan

---

**From:** Shore, Berry  
**Sent:** Tuesday, November 03, 2015 2:06 PM  
**To:** Montella, Daniel; Balla, Richard; Matthews, Joan  
**Subject:** FW: Pier 54

From Schumer's office.

---

**From:** Martin, Nicholas (Schumer) [[mailto:Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)]  
**Sent:** Tuesday, November 03, 2015 10:44 AM  
**To:** Shore, Berry <[Shore.Berry@epa.gov](mailto:Shore.Berry@epa.gov)>  
**Subject:** Pier 54

FYI, Army Corps told me yesterday that the comment period was extended to Nov. 19<sup>th</sup>. Do let me know if anything changes on your end.

-----  
Nick Martin  
Director of Policy and Economic Development  
Office of Senator Charles E. Schumer  
780 3rd Avenue, 23rd Floor  
New York, NY 10017  
(o) 212-486-7804  
(c) 917-275-4243  
[Nicholas\\_Martin@schumer.senate.gov](mailto:Nicholas_Martin@schumer.senate.gov)



## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Monday, November 02, 2015 12:48 PM  
**To:** Montella, Daniel; Matthews, Joan  
**Cc:** Gratz, Jeff; Nyman, Robert  
**Subject:** RE: revised pier 55 letter info: Joan, Jeff, Dan: Dan's revised letter looks good to me...one small edit...

RE: revised pier 55 letter info:

Joan, Jeff, Dan:

Dan's revised letter looks good to me...I think it is what we discussed.

one small edit...in the 2<sup>nd</sup> paragraph add a comma so it reads "(e.g., piers)"

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 balla.richard@epa.gov

---

**From:** Montella, Daniel  
**Sent:** Monday, November 02, 2015 12:27 PM  
**To:** Matthews, Joan  
**Cc:** Gratz, Jeff ; Balla, Richard ; Nyman, Robert  
**Subject:** revised pier 55 letter info

See attached. A 3a letter doesn't need much, so I lined out most of the specifics, we can put such comments in our follow up letter. New verbiage is in red.

.

- Dan

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Monday, October 26, 2015 10:02 AM  
**To:** Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard; Montella, Daniel  
**Subject:** RE: revised draft Pier 54 letter

Thanks so much, Bob. I will get back to you as soon as I can.  
Joan

---

**From:** Nyman, Robert  
**Sent:** Monday, October 26, 2015 9:36 AM  
**To:** Matthews, Joan  
**Cc:** Gratz, Jeff; Balla, Richard; Montella, Daniel  
**Subject:** revised draft Pier 54 letter

Joan,

Attached is a modified version of the draft letter on Pier 54 that we discussed last week.

Here is the link to the Section 404(q) dispute resolution process.  
<http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>

Also attached are a few bullets that you might find useful.

Reminder - comments are due November 4. Please let us know how you would like to proceed.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

**From:** [Nyman, Robert](#)  
**To:** [Montella, Daniel](#); [Balla, Richard](#); [Cantilli, John](#)  
**Subject:** Approach to comments on Pier 54  
**Attachments:** [Oct 2015 draft EPA comments on Pier 54 application.docx](#)

---

Discuss draft comments and if we only comment on PN or the Joint Application that was submitted in February.

Comments are due Nov 3.

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides is appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM<sub>2.5</sub>, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

DEBORAH J. GLICK  
Assemblymember 66<sup>TH</sup> District  
New York County

CHAIR  
Higher Education Committee

COMMITTEES  
Environmental Conservation  
Rules  
Ways & Means

October 14, 2015

Christopher S. Mallery, Chief  
Arm Corp of Engineers, Regulatory Branch  
New York District  
Jacob K. Javitz Federal Building  
New York, NY 10278-0090

Dear Dr. Mallery,

Thank you for Public Notice NAN-1998-00290 regarding a 30-day comment period for Hudson River Park Trust permits. While the date of issue is October 2, 2015, this letter did not arrive in my office until October 9<sup>th</sup>, which is a full week after the comment period opened. I have also been contacted by other who received notice on October 9<sup>th</sup>. As indicated in your public notice, comments must be received by the Army Corp by the end of the comment period. As a result of this, and the delay in your mailing the notices, the 30-day comment period is effectively a two week comment period. I request that you extend the comment period by a minimum of one additional week.

This is a massive project which raised many concerns for the community. They have a right to have their input heard. Please extend the deadline for written comments to end no sooner than November 11<sup>th</sup>.

Thank you for your attention to your matter.

Sincerely,

A handwritten signature in black ink that reads "Deborah J. Glick".

Deborah J. Glick  
Assemblymember

Clean Air Campaign Inc., 307 7th Avenue #606, New York NY 10001, 212-582-2578

Re: Army Corps NY District Public Notice (PN) NAN-1998-00290 Issue Date: 10/5/15 (or 10/2/15); Expiration Date: 11/4/15; ostensibly for the proposed "Pier 54"/Pier 55/Diller Island amphitheater venture in the lower Hudson River, but actually for more  
Date: 10/26/15 Draft  
From: Marcy Benstock, Executive Director, Clean Air Campaign Inc., Open Rivers Project;  
Jim Scarcella, Trustee, Natural Resources Protective Association (NRPA), Staten Island

The Army Corps NY District (the Corps) issued a Public Notice NAN-1998-00290 (PN) on 10/5/15 (or 10/2/15) which is so confusing and misleading that it would be hard for any member of the public to understand it. The full 10-page 2015 PN makes obscure references to various documents in a 5/31/2000 approval package that the Corps issued more than 15 years ago, with Permit Number 1998-00290 (later called NAN-1998-00290). That "Big Permit" issued to the so-called Hudson River Park Trust (HRPT, a State public authority) was for work throughout a staggering 490 acres of critical habitat in the lower Hudson River ("the River" below). No PN reader who is not familiar with various documents in that old 5/31/2000 approval package could be expected to understand what these obscure references mean.

This Clean Air Campaign (CAC) and NRPA memo highlights some of the **most important omissions and misrepresentations in the Corps' October 2015 PN NAN-1998-00290** ("the PN" below). CAC has not yet drafted CAC's comment letter to the Corps on the significant adverse environmental effects and the practicable alternatives to the actual "Pier 54"/Pier 55/Diller Island amphitheater project that would make it illegal under the federal Clean Water Act (CWA) and other laws for the Corps to approve it.

**I. The stated "Activity" and "Location" on the Corps' PN are false and misleading. Pier 55 is a totally new project in and over the River's open undeveloped waters, not a "replacement of...Piers 54."**

The PN claims that the "Activity:" is "Replacement of previously-authorized Piers *[sic]* 54, not-in-place, in a new configuration," and gives its "Location:" as "the foot of West 12th Street." The squib on the Corps website and p. 4 of the full 10-page PN add the phrase "between the locations of Pier 54 and Pier 56 in the Hudson River."

The **totally new Pier 55 project in and over the open undeveloped waters of the Hudson River** which the Corps is proposing to use the old Big Permit to authorize is **not** at the foot of W. 12th St., but in the nearshore waters at the foot of W. 13th St. It is the old Pier 54, not the proposed new Pier 55, which is in the River at the foot of W. 12th St. Attorneys for the applicant, HRPT, are simply calling the completely new Pier 55 project "Pier 54" or a "replacement" in order to make an end-run around legal permitting requirements.

The old year 2000 Big Permit No. 1998-00290 stated clearly on p. 3 that "**All** construction or work on" Pier 54 "**shall take place within the footprint of the existing pier**"--that is, **old Pier 54**. The new Pier 55 project doesn't fit that description. (Please see also below.)

**II.** One of the two **most important sentences** buried in the Corps' Oct. 2015 PN says the Corps will use any comments received **"to determine whether to authorize the [alleged] pier replacement under the existing" Year 2000 Big Permit.** (PN p. 1.)

In view of the specific limitation in the 5/31/2000 Big Permit stating that Pier 54 was only allowed to be rebuilt within the footprint of the old Pier 54, it would be improper and, in our view, illegal for the Corps to authorize Pier 55 in undeveloped open water at a different location. The environmentally critical 490-acre River habitat where this end-run around normal Corps permitting requirements is being attempted consists in part of more than 37 old, new and ghost "piers" which HRPT would like to have rebuilt for non-water-dependent uses, and other fills and "floating" and other structures that misuse the River.

But the extraordinary national value of this prime marine and estuarine habitat for Atlantic Coast fisheries stems from the fact that much of this habitat still consists of **water**. The open undeveloped waters between the hundreds of large and smaller components of HRPT's overall piecemealed real estate venture in this 490-acre habitat in the River are priceless treasures. And even the water beneath the older piers provides habitat that can be used for fish migration, and for benthic feeding and resting for some species.

If the Corps allows this egregious example of a totally new, non-essential Pier 55 project to proceed at one of the treasured open water locations between old Piers 54 and 56, the Corps will be establishing a precedent for filling in **all of the open waters that remain in the irreplaceable 490-acre stretch of the River** governed by the old Big Permit. While that unprecedented (and, we believe, illegal) year 2000 Big Permit did allow for "modifications" under some circumstances, federal agencies were induced to drop their objections to the Big Permit only after HRPT and their partners claimed there would be a net reduction in water coverage and shading over **the entire 490 acres of the River**--that is, in what the Corps' Big Permit referred to as "Segments 3, 4, 5, 6 and 7" of the whole 490 acres of the River, not just in Segment 5 (where Pier 55/Diller Island would be built).

HRPT and their attorneys have been playing a numbers game with federal and state agencies for decades, adding and subtracting acres of water coverage in ways that confuse and mislead. But the year 2000 claim of a net reduction in water coverage and shading throughout this critical 490-acre habitat had proved to be false years ago, even before HRPT proposed adding yet another 2.7-acre Pier 55/Diller Island project to the overall total.

**III.** The **second most important--and totally obscure--sentence** buried on p. 2 of the Oct. 2015 PN relates to **unlimited authorizations to blanket any or all of the open waters of the River with so-called "historic vessels."**

Buried in an innocuous-sounding paragraph on historic places on p. 2 of the PN is the following sentence: "A Programmatic Agreement with the New York State Office of Parks, Recreation and Historic Preservation (NYSHPO) was signed on 3 May 2000 and made part of the issued permit" (that is, the Big Permit). Clever language inserted on many different pages in this 5/3/2000, 21-page Programmatic Agreement is what allows numerous so-called historic vessels to



blanket the River. (Those "vessels" could be as large and deep as the huge mothballed World War II aircraft carrier being used as the so-called Intrepid Sea-Air-Space Museum, for example.)

The "Pier 54"/Pier 55/Diller Island project currently proposed for Corps authorization would have a "support barge" mooring platform connected to it (PN pp. 4 and 7), allegedly for a "support barge" for "possible seasonal mooring." This platform and vessel are depicted in the PN as relatively small. But if the Corps authorizes the "Pier 54"/Pier55/Diller Island project under the terms of the 5/31/2000 Big Permit and its associated Programmatic Agreement, then who knows how many large "historic vessels" might be permanently lodged in the River next to Pier 55, the way the Intrepid was lodged in the River.

#### **IV. Section 404 of the federal Clean Water Act (CWA) and the regulatory framework that governs the Corps' and EPA's implementation of federal permitting regulations are improperly described in the Oct. 2015 PN. CWA Sec. 404 comes first, before the Corps' "public interest test."**

Buried on p. 2 of the PN is the phrase "Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act...." These 404(b)(1) Guidelines--regulations that have the force of law--can't just be lumped in with a jumble of other "public interest" factors. The Corps must make a determination to grant or deny a permit or other authorization pursuant to the 404(b)(1) Guidelines first.

The following misleading sentence is more prominently featured on p. 1 of the Corps' PN: "The decision whether to issue the construction authorization for the pier replacement request will be based on an evaluation of the probable impact...of the proposed pier replacement on the public interest." Page 1 then goes on to list some--but not all--of the public interest factors that the Corps is allowed to consider--but not until after a proper, legally valid 404 determination is made. The grab bag of public interest factors is only supposed to be considered **if the project complies with EPA's 404(b)(1) regulations.**

It is the Corps' own regulations that state that **the permit must be denied if the project would not comply with the 404(b)(1) regulations. And the "Pier 54"/Pier 55/Diller Island project** (which would have cumulative adverse environmental effects on the 490-acre habitat in the River, and has "practicable alternatives" at higher, dryer, safer upland locations) **would not comply with the relevant 404 (b)(1) standards.** If Pier 55/Diller Island's permit or other authorization must be denied pursuant to 404(b)(1), the Corps is not allowed to jump over the two separate and independent 404(b)(1) tests for granting or denying permits, so that the Corps can arbitrarily declare that granting a permit is in the public interest.

#### **V. The Corps Oct. 2015 PN does not disclose that the new Pier 55/Diller Island--designed to attract 5,000 people out to a currently open, undeveloped part of the River--would be built in a #1 (highest risk) hurricane evacuation zone.**

The old Big Permit was approved before Hurricanes Katrina and Irene and Superstorm

Sandy hit. Although the Corps has ignored the lessons of these disasters up to now, **Hurricane Patricia** should remind the Corps and other officials **this week** that computer models cannot predict exactly where a hurricane will land, or what its localized impacts will be.

HRPT and its contractors and allies often claim that they will build projects like Pier 55/Diller Island extra-tall to minimize flooding. But Hurricane Patricia's and other hurricanes' gale-force winds and driving rains demonstrated that areas can be devastated--and public safety can be put in jeopardy--from catastrophic storm and hurricane impacts that extend well beyond flooding.

**VI.** The PN misleadingly refers to forests of **new and old concrete, steel pipe and timber pilings** in the River as "fishery habitat enhancement" or "**fishery habitat pile fields**" (p. 2). This is outrageous. **It is the water in the Hudson River that is the fishery habitat--not the ever-multiplying thickets of old and new pilings that HRPT and its partners propose to leave or drive into the River (many of which would be as tall and as wide as trees).**

**VII.** The PN does not clearly disclose the fact that the actual Pier 55 amphitheater and performance space project would result in a **net increase in pilings, fills and structures, and in water coverage and shading, in and over the River**, beyond what was there before.

The wholly new Pier 55 project is often referred to as "Diller Island" because the approximately 2.7-acre main new structure offshore would be linked to the upland by gangways (called "accessway" or "access ramp" on unnumbered pages 7 and 8 of the 10-p. full PN), and would have additional structures underneath it and/or alongside it.

**The total number and dimensions of habitat-threatening pilings and obstructions to fish migration in the vicinity of Piers 54, 55, 56 and 57 would increase significantly.**

The PN describes a dizzying array of "approximate" numbers of new pilings of various types and dimensions to be added to the River to support the new Pier 55 and its accessways, barge mooring platform, protective fender clusters etc. (according to PN pp. 4-5 and 7-8). These would be **in addition to the "approximately...600 existing pilings"** that would remain in the River at Pier 54 and Pier 56. That adds up to a large number of pilings in a limited stretch of the River, just south of Pier 57, where even more pilings can be expected to be added to the River if the Corps approves the latest changes in non-water-dependent uses proposed for Pier 57 as well.

The amphitheater and other performance venues, public restrooms and other fills/structures proposed for Diller Island would have to have sound stages and other heavy equipment trucked in for many performances. Those performances would be designed to attract up to 5,000 people out in the River offshore (some of whom might be conveyed to performances by some kind of vehicle). Thus the new pilings for a Pier 55/Diller Island venture would have to support heavier loads than the old pilings that were left in the River at old Pier 54 and ghost Pier 56 did.

The PN's statement on pp. 4-5 that "the flowable concrete to be placed inside [139 driven...hollow pipe piles] below the plane of Spring High Water...will be confined within the pipe piles and would not result in adverse impacts to Hudson River water quality or aquatic biota" is

disingenuous. It could mislead the casual reader into assuming that the piling structures themselves (not just the concrete inside of them) would not "result in adverse impacts."

In fact, each of these pilings would permanently eliminate habitat throughout the water column within which they would stand. These and other pilings referred to in the PN would eliminate benthic food sources for bottom-feeders, and increase the rate at which sediment accumulates (which can ultimately eliminate a prime open water habitat by turning it into fill to support misplaced real estate development projects). Such pilings can also block fish migration, and more. The hundreds of two-foot-thick and three-foot-thick new concrete pilings plus additional pilings required to support the heavy loads expected at Pier 55 if the Corps approves it would exacerbate all of these adverse habitat and fisheries impacts--not only within the Pier 54 through Pier 62 "development node," but beyond it.

**Water coverage and shading would increase.** The Corps' 5/31/2000 Big Permit stated that the deck on existing pier 54 measured approximately "490 feet by 60 feet" at that time (less than 1 acre of water covered), and now that HRPT has removed Pier 54's deck entirely, even more beneficial sunlight can reach the habitat (and promote photosynthesis) in the River at Pier 54 than it did before. Ghost Pier 56 had already had its deck removed even before HRPT began trying to increase water coverage and shading over the River (while pretending to do the opposite).

Despite the misleading implications on pp. 1 and 4 of the Oct. 2015 PN that HRPT is cutting back rather than doing more work in and over the River, it is clear that the Pier 55/Diller Island project would **increase water coverage and shading** in and over the River.

#### **VIII. The so-called "Hudson River Park" in the PN is not a park.**

The Army Corps is charged with regulating the portion of the so-called Hudson River "Park" (HRP) project that is in the water--namely the 490-acre in-water portion of the 550-acre HRPT project. (HRPT's overall 550-acre project area includes a real park on the upland as well--the green landscaped acreage on 60 acres of upland between the bikeway next to Route 9A and the Hudson River. )

The PN misleadingly refers to the portion of the HRP project that spans 490 acres of the Hudson River a "State Park." Most readers would confuse this "park" with the upland greenway, or perhaps with an upstate park like Adirondack State Park. Very few readers might realize that what the Corps PN is referring to is actually a navigable public waterway. That waterway is not only used for navigation, but also provides a unique and limited marine and estuarine habitat for more than 100 species (including endangered sturgeon species), and is essential for sustaining valuable fisheries from Canada to the Carolinas, up and down the Atlantic Coast.

There are several ways the Corps might approach describing the 490-acre River habitat (within the HRPT project area) where Pier 55/Diller Island would be located more honestly than the October 2015 PN now does. Sec. 3(e) of the NY State Hudson River Park Act describes HRPT's project area simply as everything within a specified set of project area boundaries between Battery Park City and W. 59th Street extended out into the River to the U.S. Pierhead Line offshore. (The

specified boundaries surround 490 acres of Hudson River waters as well as the upland greenway.)

Alternatively, the Corps might describe the portion of the River where Pier 55/Diller Island would be built as the habitat where the Westway highway and Hudson River development project was once proposed. However, if that were done, cumulative adverse habitat and fisheries impacts would still need to be assessed throughout the entire overall 490-acre habitat currently governed by the year 2000 Big Permit that the Corps (improperly) issued to HRPT, and those fisheries impacts would need to include impacts on coastal stocks of striped bass, sturgeon and other migratory species **wherever those species go.**

A third alternative to describe the overall piecemealed project that HRPT is planning, assembling, building, and leasing out in the River would be to describe it as a "mixed- use offshore in-water real estate assemblage, site preparation, and development venture." The only terms the Corps should never use for the River any more if the Corps wishes to invite relevant information from agencies, officials and the public in order to make sound, lawful decisions are "Hudson River Park," "Hudson River State Park," or "the park."

**IX.** The PN says (p. 2) that public comments "are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement [EIS] pursuant to the National Environmental Policy Act [NEPA]." Clearly a **full federal EIS process under NEPA should be carried out by the Corps (not the applicant and its legal and environmental consultants) if the Corps intends to keep authorizing any more non-essential, non-water-dependent, habitat-threatening, view-blocking site creation and development projects such as Pier 55/Diller Island in or on the River.**

No full federal EIS process has ever been carried out--with the draft and final EISs and public hearings required by NEPA--for the 490-acre habitat of extraordinary national importance in the nearshore waters of the lower Hudson River off Manhattan. At least one public official--Assemblymember Deborah Glick--has requested a federal NEPA EIS for Pier 55/Diller Island this year, and a number of U.S. Senators and Congressmembers had made such a request for the entire 490-acre HRPT project area in the River prior to issuance of the Big Permit.

More Atlantic Coast fisheries may crash, and more people may be injured or killed unnecessarily in storms and hurricanes, if the Corps allows HRPT's planned buildout in the 490 acres of critical habitat in the River to continue. Neither Friends of the Earth, the Sierra Club, NYPIRG nor CAC thinks a long EIS process is needed to determine that 15 years of building out into the River should be brought to an end at this point. But if the Corps and other responsible agencies and officials refuse to end the misuse of taxpayers' money and misuse of the River--as they should; and if the Corps and others refuse to protect public safety by ending authorizations for reckless new in-water projects that put people in harm's way in storms and hurricanes; if, in short, building in the River isn't stopped; then a federal EIS is essential before any more projects in the River as ill-conceived and reckless as Pier 55/Diller Island are approved.

**X.** **Both Pier 55/Diller Island and any more building in the River are wildly controversial. And far from being "transparent," the back-room quid-pro-quo deals that have been made**

**to advance such harmful projects and policies so far have been carried out in secret.**

The Oct. 2015 PN says on p. 1 that HRPT "has asked the [Corps] New York District to publish a Public Notice...for improved transparency in the process." One of the many factors that sparked deeply-felt, serious opposition to the Pier 55/Diller Island project was the secrecy with which HRPT and billionaire mogul Barry Diller and entities Mr. Diller controls negotiated the terms of the deal for this project over a two-year period.

It is the Corps' responsibility, not that of an old "permittee" or a current "applicant" like HRPT, to determine when a proposal is sufficiently controversial to necessitate a public hearing; to strengthen the case for the denial of permits or other authorizations; or, at minimum, to trigger an independent, objective, federal NEPA EIS process. Unless HRPT and its partners withdraw their requests for a modification of HRPT's dangerously outdated 5/31/2000 Big Permit, or any other Corps authorizations for Pier 55/Diller Island, the Corps should issue a new, less misleading Public Notice for this project, and provide a significant extension of the deadline for comments on it which would apply to all members of the public.

#

**From:** [Balla, Richard](#)  
**To:** [Nyman, Robert](#)  
**Cc:** [Montella, Daniel](#)  
**Subject:** Bob: some developments on the pier 55 comment letter...  
**Date:** Monday, November 02, 2015 5:53:03 PM  
**Attachments:** [pier 55 draft comments nov 2 404q -3a.docx](#)  
[ATT00001.htm](#)

---

Bob: some developments on the pier 55 comment letter...

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway,  
NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

Begin forwarded message:

**From:** "Matthews, Joan" <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Date:** November 2, 2015 at 5:00:25 PM EST  
**To:** "Montella, Daniel" <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>, "Balla, Richard" <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>  
**Cc:** "Gratz, Jeff" <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>  
**Subject:** pier 55 draft comments nov 2 404q -3a.docx

Ok – thanks very much Dan. Minor edits and a question for something to be made more explicit. Please make the change, run it by Jeff, and put it through the concurrence process. I will be in the office tomorrow afternoon, but feel free, Jeff, to send up first thing in the a.m.

Joan

DRIFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. If such structures proliferate, we believe that over time there will be increased desire to rebuild damaged structures as well as pressure to try to make these more flood resistant. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

Commented

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement Memorandum, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

EXEMPTION  
5

**DRAFT**

Sincerely,

Judith A. Enck  
Regional Administrator



Clean Air Campaign Inc., 307 7th Avenue, New York NY 10001, 212-582-2578  
Friends of the Earth/NY, 72 Jane Street, New York NY 10014, 917-539-5300  
Natural Resources Protective Assn., PO Box 050328, Staten Island NY 10305, nrpa2@aol.com

January 22, 2016 [3:45 pm DRAFT]

Basil Seggos, Acting Commissioner  
NYS Department of Environmental Conservation (DEC)  
625 Broadway  
Albany NY 12233-1011

Iver M. Anderson  
NYSDEC Region 2  
47-40 21st St.  
Long Island City NY 11101-5407

Re: DEC ID# 2-6299-00004/00003, Hudson  
River Park Trust application for Pier 54  
permit modification for a new "Pier 55"  
in Hudson River's open waters

By Email and U.S. Postal Service

Dear Commissioner Seggos and Mr. Anderson,

The Hudson River Park Trust (HRPT, a State public authority) has applied to the NYS Department of Environmental Conservation (DEC) for modifications of existing permits (an Article 15 title 5 "Excavation & Fill in Navigable Waters" and an Article 25 Tidal Wetlands permit) and of an existing Sec. 401 Clean Water Act Water Quality Certification **for a different proposal** in the hope that DEC will allow the **Pier 55 (not Pier 54)/Diller Island project** to go forward in what is now open water in an environmentally critical open water habitat in the lower Hudson River ("the River" below).

Friends of the Earth/NY, the Natural Resources Protective Association, and Clean Air Campaign Inc. **strongly oppose this proposal and urge DEC not to approve it.**

We appreciate DEC Commissioner Basil Seggos's decision to extend the comment period on this proposal to Jan. 25, 2016. However, the Notice in DEC's 12/9/15 Environmental Notice Bulletin (ENB) for DEC Region 2 was misleading.

It failed to disclose, for example, that nearly all of the large habitat-shading Pier 55/Diller Island deck, barge(s), and accessways, and the forests of new habitat-destroying pilings to be driven into the riverbed underneath the manmade "Pier 55" island and accessway structures, would be built in and over what is now prime open water habitat in the lower Hudson River Estuary. The ENB Notice also failed to disclose that the "public park" "cultural events space" it cites is actually a money-making amphitheater venture to be controlled by billionaire financial and entertainment mogul Barry Diller through his Pier55 Inc. and other partners.

None of the uses proposed for this high-risk, habitat-threatening, misplaced, non-essential public-private venture is truly water-dependent. Furthermore, the misplaced Pier 54/Pier 55/Diller Island project would put up to 5,000 people at a time in harm's way out in a #1 (highest risk)

hurricane evacuation zone out in the tumultuous lower Hudson River offshore. These 5,000 people could include first responders in deadly storms.

DEC's State Environmental Quality Review (SEQR) Determination that the "Project is a Type I action and will not have a significant effect on the environment" is illegal and unsound. If it goes forward, this project will have potentially devastating cumulative impacts on a unique and limited marine and estuarine habitat of extraordinary national importance. The vigorous protection and preservation of the aquatic resources in this habitat are essential for sustaining valuable Atlantic Coast and Hudson River fisheries and other living marine resources. The Pier 54/Pier55/Diller Island project would also increase traffic and air pollution on and from the West Side highway (especially in combination with the expanded Pier 57 complex proposed to its north in the River), and it would increase noise and destroy treasured River views.

DEC's ENB notice also fails to disclose that the Pier 54/Pier 55/Diller Island project is part of a much larger in-water River development project spanning up to a staggering 490 acres of the Hudson River (that is, the 490-acre in-water portion of HRPT's overall project area that is in the River from Battery Park City to W. 59th Street extended out to the U.S. Pierhead Line 1,000-1,500 feet offshore). Calling the navigable public waterway in these 490 acres of the lower Hudson a "Park" is just spin.

If Governor Andrew Cuomo's Administration wasn't keenly aware of the immense environmental significance of this irreplaceable habitat before, the City Club of New York et al. 2015 lawsuit against HRPT and Pier55, Inc., should have alerted DEC and other agencies to the need to give this critical habitat the maximum protection our most basic State and Federal environmental laws afford.

In conclusion, we strongly urge DEC to deny the requested permit modifications and certification and to let the Hudson River be a river instead. We would appreciate a response to this letter, confirming that DEC has received it, and informing us of DEC's next steps.

Sincerely,

Bunny Gabel, Friends of the Earth, NY Representative  
Jim Scarcella, President, Natural Resources Protective Association  
Marcy Benstock, Executive Director, Clean Air Campaign Inc./Open Rivers Project

cc: U.S. Army Corps of Engineers  
U.S. Environmental Protection Agency  
U.S. NOAA/NMFS  
U.S. Fish & Wildlife Service

???

MT Net Fishing Co., PO Box 1169, Poughkeepsie NY 12602, 845-452-2324

New York Public Interest Research Group, 9 Murray St., NY NY 10007, 212/349-6460  
Sierra?

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, include an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent

discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides are appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Gratz, Jeff](#)  
**To:** [Nyman, Robert](#)  
**Cc:** [Montella, Daniel](#); [Balla, Richard](#); [Matthews, Joan](#)  
**Subject:** FW: Corps Public Notice  
**Date:** Monday, October 26, 2015 12:53:11 PM  
**Attachments:** [PN1998102615.DOC](#)

---

-----Original Message-----

From: Cleanaircmpgn02@aol.com [<mailto:Cleanaircmpgn02@aol.com>]  
Sent: Monday, October 26, 2015 12:36 PM  
To: john.doty@mail.house.gov  
Cc: Enck, Judith <Enck.Judith@epa.gov>; Gratz, Jeff <Gratz.Jeff@epa.gov>; sanchalas@assembly.state.ny.us; BrentBlackwelder@yahoo.com; bunnygabel@gmail.com; carlarnold@mac.com; Roger.Downs@Sierraclub.org; grussian@nypirg.org; jmylod@aol.com; nrpa2@aol.com; cleanaircmpgn02@aol.com  
Subject: Corps Public Notice

Congressman Jerrold Nadler  
Att.: John Doty  
U.S. House of Representatives  
Washington DC  
Dear Jerry,

You were one of the Congressmembers and U.S. Senators who wrote to the U.S. Army Corps of Engineers more than 15 years ago to request that a full federal Environmental Impact Statement (EIS) process be carried out pursuant to the National Environmental Policy Act (NEPA) before the Corps' New York District approved any authorization to build in and/or over 490 acres of critical habitat in the Hudson River off lower Manhattan.

Some of you may have been persuaded to drop your requests for a NEPA EIS later based on representations that have turned out to be false since the Corps issued an unprecedented, and we believe illegal, "Big Permit" to the Hudson River Park Trust (HRPT, a State public authority) for a vast stretch of the lower Hudson more than 15 years ago--without benefit of any NEPA EIS.

The 7-page, 10/26/15 memo from Clean Air Campaign and the Natural Resources Protective Association which is attached discusses some of the misrepresentations that reappear in the Public Notice (PN) that the Corps NY District issued this October 2015--on Oct. 2 or Oct. 5, 2015, PN NAN-1998-00290.

This PN, ostensibly for the "Pier 54"/Pier 55/Diller Island project, may actually authorize even more work in the 490-acre critical habitat in the nearshore waters of the lower Hudson River off Manhattan than just the wasteful, destructive, illegal "Dillerville" project.

We would appreciate a response confirming that you have received this email and the full 7-page memo attached.

We would also appreciate receiving copies of any correspondence your office has had with the Corps or other federal agencies about the current proposal.

Needless to say, we hope that you will oppose any authorization for "Pier 54"/Pier 55/Dillar Island, as well as for any other upcoming work or changes in use proposed for the River between Battery Park City and W. 59th Street extended out to the U.S. Pierhead Line offshore. But in any case, we would appreciate receiving the correspondence requested.

We would be happy to answer any questions that you or your staff may have.

As you know, the Sierra Club, Friends of the Earth, NYPIRG and Clean Air Campaign have been trying to preserve the River as river for decades, starting with our longstanding opposition to the Westway highway and River development project. For more information, please see [www.WestwayThenandNow.org](http://www.WestwayThenandNow.org) (with links via FAQ to the superb Sierra Club et al. decisions declaring Army Corps permits for Westway's Hudson River development site illegal, as having been granted in violation of the federal Clean Water Act, Rivers & Harbors Act of 1899, NEPA and other laws).

Sincerely,  
Marcy Benstock, Executive Director, Clean Air Campaign Inc.  
307 7th Avenue, Ste. 606

Clean Air Campaign Inc., 307 7th Avenue #606, New York NY 10001, 212-582-2578

Re: Army Corps NY District Public Notice (PN) NAN-1998-00290 Issue Date: 10/5/15 (or 10/2/15); Expiration Date: 11/4/15; ostensibly for the proposed "Pier 54"/Pier 55/Diller Island amphitheater venture in the lower Hudson River, but actually for more  
Date: 10/26/15 Draft  
From: Marcy Benstock, Executive Director, Clean Air Campaign Inc., Open Rivers Project;  
Jim Scarcella, Trustee, Natural Resources Protective Association (NRPA), Staten Island

The Army Corps NY District (the Corps) issued a Public Notice NAN-1998-00290 (PN) on 10/5/15 (or 10/2/15) which is so confusing and misleading that it would be hard for any member of the public to understand it. The full 10-page 2015 PN makes obscure references to various documents in a 5/31/2000 approval package that the Corps issued more than 15 years ago, with Permit Number 1998-00290 (later called NAN-1998-00290). That "Big Permit" issued to the so-called Hudson River Park Trust (HRPT, a State public authority) was for work throughout a staggering 490 acres of critical habitat in the lower Hudson River ("the River" below). No PN reader who is not familiar with various documents in that old 5/31/2000 approval package could be expected to understand what these obscure references mean.

This Clean Air Campaign (CAC) and NRPA memo highlights some of the **most important omissions and misrepresentations in the Corps' October 2015 PN NAN-1998-00290** ("the PN" below). CAC has not yet drafted CAC's comment letter to the Corps on the significant adverse environmental effects and the practicable alternatives to the actual "Pier 54"/Pier 55/Diller Island amphitheater project that would make it illegal under the federal Clean Water Act (CWA) and other laws for the Corps to approve it.

**I. The stated "Activity" and "Location" on the Corps' PN are false and misleading. Pier 55 is a totally new project in and over the River's open undeveloped waters, not a "replacement of...Piers 54."**

The PN claims that the "Activity:" is "Replacement of previously-authorized Piers *[sic]* 54, not-in-place, in a new configuration," and gives its "Location:" as "the foot of West 12th Street." The squib on the Corps website and p. 4 of the full 10-page PN add the phrase "between the locations of Pier 54 and Pier 56 in the Hudson River."

The **totally new Pier 55 project in and over the open undeveloped waters of the Hudson River** which the Corps is proposing to use the old Big Permit to authorize is **not** at the foot of W. 12th St., but in the nearshore waters at the foot of W. 13th St. It is the old Pier 54, not the proposed new Pier 55, which is in the River at the foot of W. 12th St. Attorneys for the applicant, HRPT, are simply calling the completely new Pier 55 project "Pier 54" or a "replacement" in order to make an end-run around legal permitting requirements.

The old year 2000 Big Permit No. 1998-00290 stated clearly on p. 3 that "**All** construction or work on" Pier 54 "**shall take place within the footprint of the existing pier**"--that is, **old Pier 54**. The new Pier 55 project doesn't fit that description. (Please see also below.)

**II.** One of the two **most important sentences** buried in the Corps' Oct. 2015 PN says the Corps will use any comments received **"to determine whether to authorize the [alleged] pier replacement under the existing" Year 2000 Big Permit.** (PN p. 1.)

In view of the specific limitation in the 5/31/2000 Big Permit stating that Pier 54 was only allowed to be rebuilt within the footprint of the old Pier 54, it would be improper and, in our view, illegal for the Corps to authorize Pier 55 in undeveloped open water at a different location. The environmentally critical 490-acre River habitat where this end-run around normal Corps permitting requirements is being attempted consists in part of more than 37 old, new and ghost "piers" which HRPT would like to have rebuilt for non-water-dependent uses, and other fills and "floating" and other structures that misuse the River.

But the extraordinary national value of this prime marine and estuarine habitat for Atlantic Coast fisheries stems from the fact that much of this habitat still consists of **water**. The open undeveloped waters between the hundreds of large and smaller components of HRPT's overall piecemealed real estate venture in this 490-acre habitat in the River are priceless treasures. And even the water beneath the older piers provides habitat that can be used for fish migration, and for benthic feeding and resting for some species.

If the Corps allows this egregious example of a totally new, non-essential Pier 55 project to proceed at one of the treasured open water locations between old Piers 54 and 56, the Corps will be establishing a precedent for filling in **all of the open waters that remain in the irreplaceable 490-acre stretch of the River** governed by the old Big Permit. While that unprecedented (and, we believe, illegal) year 2000 Big Permit did allow for "modifications" under some circumstances, federal agencies were induced to drop their objections to the Big Permit only after HRPT and their partners claimed there would be a net reduction in water coverage and shading over **the entire 490 acres of the River**--that is, in what the Corps' Big Permit referred to as "Segments 3, 4, 5, 6 and 7" of the whole 490 acres of the River, not just in Segment 5 (where Pier 55/Diller Island would be built).

HRPT and their attorneys have been playing a numbers game with federal and state agencies for decades, adding and subtracting acres of water coverage in ways that confuse and mislead. But the year 2000 claim of a net reduction in water coverage and shading throughout this critical 490-acre habitat had proved to be false years ago, even before HRPT proposed adding yet another 2.7-acre Pier 55/Diller Island project to the overall total.

**III.** The **second most important--and totally obscure--sentence** buried on p. 2 of the Oct. 2015 PN relates to **unlimited authorizations to blanket any or all of the open waters of the River with so-called "historic vessels."**

Buried in an innocuous-sounding paragraph on historic places on p. 2 of the PN is the following sentence: "A Programmatic Agreement with the New York State Office of Parks, Recreation and Historic Preservation (NYSHPO) was signed on 3 May 2000 and made part of the issued permit" (that is, the Big Permit). Clever language inserted on many different pages in this 5/3/2000, 21-page Programmatic Agreement is what allows numerous so-called historic vessels to

blanket the River. (Those "vessels" could be as large and deep as the huge mothballed World War II aircraft carrier being used as the so-called Intrepid Sea-Air-Space Museum, for example.)

The "Pier 54"/Pier 55/Diller Island project currently proposed for Corps authorization would have a "support barge" mooring platform connected to it (PN pp. 4 and 7), allegedly for a "support barge" for "possible seasonal mooring." This platform and vessel are depicted in the PN as relatively small. But if the Corps authorizes the "Pier 54"/Pier55/Diller Island project under the terms of the 5/31/2000 Big Permit and its associated Programmatic Agreement, then who knows how many large "historic vessels" might be permanently lodged in the River next to Pier 55, the way the Intrepid was lodged in the River.

**IV. Section 404 of the federal Clean Water Act (CWA) and the regulatory framework that governs the Corps' and EPA's implementation of federal permitting regulations are improperly described in the Oct. 2015 PN. CWA Sec. 404 comes first, before the Corps' "public interest test."**

Buried on p. 2 of the PN is the phrase "Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act...." These 404(b)(1) Guidelines--regulations that have the force of law--can't just be lumped in with a jumble of other "public interest" factors. The Corps must make a determination to grant or deny a permit or other authorization pursuant to the 404(b)(1) Guidelines first.

The following misleading sentence is more prominently featured on p. 1 of the Corps' PN: "The decision whether to issue the construction authorization for the pier replacement request will be based on an evaluation of the probable impact...of the proposed pier replacement on the public interest." Page 1 then goes on to list some--but not all--of the public interest factors that the Corps is allowed to consider--but not until after a proper, legally valid 404 determination is made. The grab bag of public interest factors is only supposed to be considered **if the project complies with EPA's 404(b)(1) regulations.**

It is the Corps' own regulations that state that **the permit must be denied if the project would not comply with the 404(b)(1) regulations. And the "Pier 54"/Pier 55/Diller Island project** (which would have cumulative adverse environmental effects on the 490-acre habitat in the River, and has "practicable alternatives" at higher, dryer, safer upland locations) **would not comply with the relevant 404 (b)(1) standards.** If Pier 55/Diller Island's permit or other authorization must be denied pursuant to 404(b)(1), the Corps is not allowed to jump over the two separate and independent 404(b)(1) tests for granting or denying permits, so that the Corps can arbitrarily declare that granting a permit is in the public interest.

**V. The Corps Oct. 2015 PN does not disclose that the new Pier 55/Diller Island--designed to attract 5,000 people out to a currently open, undeveloped part of the River--would be built in a #1 (highest risk) hurricane evacuation zone.**

The old Big Permit was approved before Hurricanes Katrina and Irene and Superstorm



Sandy hit. Although the Corps has ignored the lessons of these disasters up to now, **Hurricane Patricia** should remind the Corps and other officials **this week** that computer models cannot predict exactly where a hurricane will land, or what its localized impacts will be.

HRPT and its contractors and allies often claim that they will build projects like Pier 55/Diller Island extra-tall to minimize flooding. But Hurricane Patricia's and other hurricanes' gale-force winds and driving rains demonstrated that areas can be devastated--and public safety can be put in jeopardy--from catastrophic storm and hurricane impacts that extend well beyond flooding.

**VI.** The PN misleadingly refers to forests of **new and old concrete, steel pipe and timber pilings** in the River as "fishery habitat enhancement" or "**fishery habitat pile fields**" (p. 2). This is outrageous. **It is the water in the Hudson River that is the fishery habitat--not the ever-multiplying thickets of old and new pilings that HRPT and its partners propose to leave or drive into the River (many of which would be as tall and as wide as trees).**

**VII.** The PN does not clearly disclose the fact that the actual Pier 55 amphitheater and performance space project would result in a **net increase in pilings, fills and structures, and in water coverage and shading, in and over the River**, beyond what was there before.

The wholly new Pier 55 project is often referred to as "Diller Island" because the approximately 2.7-acre main new structure offshore would be linked to the upland by gangways (called "accessway" or "access ramp" on unnumbered pages 7 and 8 of the 10-p. full PN), and would have additional structures underneath it and/or alongside it.

**The total number and dimensions of habitat-threatening pilings and obstructions to fish migration in the vicinity of Piers 54, 55, 56 and 57 would increase significantly.**

The PN describes a dizzying array of "approximate" numbers of new pilings of various types and dimensions to be added to the River to support the new Pier 55 and its accessways, barge mooring platform, protective fender clusters etc. (according to PN pp. 4-5 and 7-8). These would be **in addition to the "approximately...600 existing pilings"** that would remain in the River at Pier 54 and Pier 56. That adds up to a large number of pilings in a limited stretch of the River, just south of Pier 57, where even more pilings can be expected to be added to the River if the Corps approves the latest changes in non-water-dependent uses proposed for Pier 57 as well.

The amphitheater and other performance venues, public restrooms and other fills/structures proposed for Diller Island would have to have sound stages and other heavy equipment trucked in for many performances. Those performances would be designed to attract up to 5,000 people out in the River offshore (some of whom might be conveyed to performances by some kind of vehicle). Thus the new pilings for a Pier 55/Diller Island venture would have to support heavier loads than the old pilings that were left in the River at old Pier 54 and ghost Pier 56 did.

The PN's statement on pp. 4-5 that "the flowable concrete to be placed inside [139 driven...hollow pipe piles] below the plane of Spring High Water...will be confined within the pipe piles and would not result in adverse impacts to Hudson River water quality or aquatic biota" is

disingenuous. It could mislead the casual reader into assuming that the piling structures themselves (not just the concrete inside of them) would not "result in adverse impacts."

In fact, each of these pilings would permanently eliminate habitat throughout the water column within which they would stand. These and other pilings referred to in the PN would eliminate benthic food sources for bottom-feeders, and increase the rate at which sediment accumulates (which can ultimately eliminate a prime open water habitat by turning it into fill to support misplaced real estate development projects). Such pilings can also block fish migration, and more. The hundreds of two-foot-thick and three-foot-thick new concrete pilings plus additional pilings required to support the heavy loads expected at Pier 55 if the Corps approves it would exacerbate all of these adverse habitat and fisheries impacts--not only within the Pier 54 through Pier 62 "development node," but beyond it.

**Water coverage and shading would increase.** The Corps' 5/31/2000 Big Permit stated that the deck on existing pier 54 measured approximately "490 feet by 60 feet" at that time (less than 1 acre of water covered), and now that HRPT has removed Pier 54's deck entirely, even more beneficial sunlight can reach the habitat (and promote photosynthesis) in the River at Pier 54 than it did before. Ghost Pier 56 had already had its deck removed even before HRPT began trying to increase water coverage and shading over the River (while pretending to do the opposite).

Despite the misleading implications on pp. 1 and 4 of the Oct. 2015 PN that HRPT is cutting back rather than doing more work in and over the River, it is clear that the Pier 55/Diller Island project would **increase water coverage and shading** in and over the River.

#### **VIII. The so-called "Hudson River Park" in the PN is not a park.**

The Army Corps is charged with regulating the portion of the so-called Hudson River "Park" (HRP) project that is in the water--namely the 490-acre in-water portion of the 550-acre HRPT project. (HRPT's overall 550-acre project area includes a real park on the upland as well--the green landscaped acreage on 60 acres of upland between the bikeway next to Route 9A and the Hudson River. )

The PN misleadingly refers to the portion of the HRP project that spans 490 acres of the Hudson River a "State Park." Most readers would confuse this "park" with the upland greenway, or perhaps with an upstate park like Adirondack State Park. Very few readers might realize that what the Corps PN is referring to is actually a navigable public waterway. That waterway is not only used for navigation, but also provides a unique and limited marine and estuarine habitat for more than 100 species (including endangered sturgeon species), and is essential for sustaining valuable fisheries from Canada to the Carolinas, up and down the Atlantic Coast.

There are several ways the Corps might approach describing the 490-acre River habitat (within the HRPT project area) where Pier 55/Diller Island would be located more honestly than the October 2015 PN now does. Sec. 3(e) of the NY State Hudson River Park Act describes HRPT's project area simply as everything within a specified set of project area boundaries between Battery Park City and W. 59th Street extended out into the River to the U.S. Pierhead Line offshore. (The

specified boundaries surround 490 acres of Hudson River waters as well as the upland greenway.)

Alternatively, the Corps might describe the portion of the River where Pier 55/Diller Island would be built as the habitat where the Westway highway and Hudson River development project was once proposed. However, if that were done, cumulative adverse habitat and fisheries impacts would still need to be assessed throughout the entire overall 490-acre habitat currently governed by the year 2000 Big Permit that the Corps (improperly) issued to HRPT, and those fisheries impacts would need to include impacts on coastal stocks of striped bass, sturgeon and other migratory species **wherever those species go.**

A third alternative to describe the overall piecemealed project that HRPT is planning, assembling, building, and leasing out in the River would be to describe it as a "mixed- use offshore in-water real estate assemblage, site preparation, and development venture." The only terms the Corps should never use for the River any more if the Corps wishes to invite relevant information from agencies, officials and the public in order to make sound, lawful decisions are "Hudson River Park," "Hudson River State Park," or "the park."

**IX.** The PN says (p. 2) that public comments "are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement [EIS] pursuant to the National Environmental Policy Act [NEPA]." Clearly a **full federal EIS process under NEPA should be carried out by the Corps (not the applicant and its legal and environmental consultants) if the Corps intends to keep authorizing any more non-essential, non-water-dependent, habitat-threatening, view-blocking site creation and development projects such as Pier 55/Diller Island in or on the River.**

No full federal EIS process has ever been carried out--with the draft and final EISs and public hearings required by NEPA--for the 490-acre habitat of extraordinary national importance in the nearshore waters of the lower Hudson River off Manhattan. At least one public official--Assemblymember Deborah Glick--has requested a federal NEPA EIS for Pier 55/Diller Island this year, and a number of U.S. Senators and Congressmembers had made such a request for the entire 490-acre HRPT project area in the River prior to issuance of the Big Permit.

More Atlantic Coast fisheries may crash, and more people may be injured or killed unnecessarily in storms and hurricanes, if the Corps allows HRPT's planned buildout in the 490 acres of critical habitat in the River to continue. Neither Friends of the Earth, the Sierra Club, NYPIRG nor CAC thinks a long EIS process is needed to determine that 15 years of building out into the River should be brought to an end at this point. But if the Corps and other responsible agencies and officials refuse to end the misuse of taxpayers' money and misuse of the River--as they should; and if the Corps and others refuse to protect public safety by ending authorizations for reckless new in-water projects that put people in harm's way in storms and hurricanes; if, in short, building in the River isn't stopped; then a federal EIS is essential before any more projects in the River as ill-conceived and reckless as Pier 55/Diller Island are approved.

**X.** **Both Pier 55/Diller Island and any more building in the River are wildly controversial. And far from being "transparent," the back-room quid-pro-quo deals that have been made**

**to advance such harmful projects and policies so far have been carried out in secret.**

The Oct. 2015 PN says on p. 1 that HRPT "has asked the [Corps] New York District to publish a Public Notice...for improved transparency in the process." One of the many factors that sparked deeply-felt, serious opposition to the Pier 55/Diller Island project was the secrecy with which HRPT and billionaire mogul Barry Diller and entities Mr. Diller controls negotiated the terms of the deal for this project over a two-year period.

It is the Corps' responsibility, not that of an old "permittee" or a current "applicant" like HRPT, to determine when a proposal is sufficiently controversial to necessitate a public hearing; to strengthen the case for the denial of permits or other authorizations; or, at minimum, to trigger an independent, objective, federal NEPA EIS process. Unless HRPT and its partners withdraw their requests for a modification of HRPT's dangerously outdated 5/31/2000 Big Permit, or any other Corps authorizations for Pier 55/Diller Island, the Corps should issue a new, less misleading Public Notice for this project, and provide a significant extension of the deadline for comments on it which would apply to all members of the public.

#

New York NY 10001

Tel.: 212-582-2578 </HTML>

**From:** [Gratz, Jeff](#)  
**To:** [Montella, Daniel](#); [Nyman, Robert](#)  
**Cc:** [Balla, Richard](#)  
**Subject:** FW: deadline extension request  
**Date:** Monday, October 19, 2015 8:57:35 AM  
**Attachments:** [ArmyCorpsextension.pdf](#)

---

Fyi - Jeff

-----Original Message-----

From: RiverCAC@aol.com [<mailto:RiverCAC@aol.com>]

Sent: Friday, October 16, 2015 12:19 PM

To: Gratz, Jeff <Gratz.Jeff@epa.gov>

Subject: deadline extension request

Attached is Assemb. Deborah Glick's letter to the Army Corps requesting an extension of the 11/4/15 deadline for comments on Public Notice No.

NAN-1998-00290 (pier 54-55-Diller Island in the Hudson River--plus much more), at least until Nov. 11, 2015.

</HTML>



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

DEBORAH J. GLICK  
Assemblymember 66<sup>TH</sup> District  
New York County

CHAIR  
Higher Education Committee

COMMITTEES  
Environmental Conservation  
Rules  
Ways & Means

October 14, 2015

Christopher S. Mallery, Chief  
Arm Corp of Engineers, Regulatory Branch  
New York District  
Jacob K. Javitz Federal Building  
New York, NY 10278-0090

Dear Dr. Mallery,

Thank you for Public Notice NAN-1998-00290 regarding a 30-day comment period for Hudson River Park Trust permits. While the date of issue is October 2, 2015, this letter did not arrive in my office until October 9<sup>th</sup>, which is a full week after the comment period opened. I have also been contacted by other who received notice on October 9<sup>th</sup>. As indicated in your public notice, comments must be received by the Army Corp by the end of the comment period. As a result of this, and the delay in your mailing the notices, the 30-day comment period is effectively a two week comment period. I request that you extend the comment period by a minimum of one additional week.

This is a massive project which raised many concerns for the community. They have a right to have their input heard. Please extend the deadline for written comments to end no sooner than November 11<sup>th</sup>.

Thank you for your attention to your matter.

Sincerely,

Deborah J. Glick  
Assemblymember

**From:** [Montella, Daniel](#)  
**To:** [Nyman, Robert](#); [Cantilli, John](#); [Balla, Richard](#)  
**Subject:** FW: For fun....  
**Date:** Wednesday, January 06, 2016 9:53:25 AM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.jpg](#)

---

And so it goes. Below is the 1989 vision

- Dan

## Post-Westway Plan Offered By Panel for Hudson Shore

By DAVID W. DUNLAP

Published: November 1, 1989

An embryonic, post-Westway plan for the Hudson River shore in Manhattan - four large coves interspersed with even larger areas for recreational, commercial or residential development - was presented yesterday by the high-level West Side Waterfront Panel.

The plan raised the possibility of new buildings on platforms over the Hudson, along Route 9A, which is to replace the West Side Highway. Three months ago, the panel ruled out landfill, which was one of the many disputed features of the earlier Westway highway project that led to its scrapping in 1985.

Members of the panel, representing New York City and the state, stressed yesterday that their new plan was not final. Rather, they said, it is meant to be a point of departure for the public debate that will shape the planning of hundreds of waterfront acres from Battery Park City to 59th Street. Emphasis on Amenities

If debate is what the panel members sought, they could not have been disappointed by yesterday's hearing at the World Trade Center. Their plan was denounced as soon as it was announced, particularly for the development potential that would be opened by the areas between the coves.

But the panel chose to emphasize the generosity of public amenities rather than the prospect of private profit. "The basic principles we tried to develop were maximum open space and maximum public use," said Michael J. Del Giudice, the panel chairman and a partner at Lazard Freres & Company.

One panel member, Tom Fox, executive director of the Neighborhood Open Space Coalition, said in reference to the coves, "The fact that we have locked in 20 percent of the river forever is a good starting point." The panel's executive director, Nancy K. Goell, said the coves "may grow larger but won't grow smaller" in the planning process.

Panel members were appointed last year by Gov. Mario M. Cuomo, Mayor Edward I. Koch and the Manhattan Borough President, David N. Dinkins. They are charged with developing a plan for land use and an esplanade to accompany Route 9A, most of which would be a six-lane road. Several Fronts at Once

The overall highway project is being created on several fronts at once. The State Transportation Department is planning the roadway while Mr. Del Giudice's committee goes through public meetings leading to a decision next February. Actual construction would not begin until well into the 1990's.

Under the plan shown yesterday to community leaders, elected officials, planners, architects and engineers, Route 9A would be accompanied by an esplanade about 130 feet wide in most places, with strips of parkland flanked by pedestrian and bicycle paths.

The western ends of major crosstown streets - Chambers, Canal, Christopher, 14th, 23d, 34th and 42d - would be marked on the esplanade with "design features" like fountains, sculptures or columns. 'Front Doors' on the Water

The coves, called basins, would extend from the bulkhead line at the shore to the pierhead line in the river. TriBeCa Basin would run roughly from Laight to Watts Streets; Village Basin, from Perry to Jane Streets; Chelsea Basin, from



22d to 24th Streets, and Convention Center Basin, from 29th to 34th Streets.

"The basins will be the front doors of the communities on the water," said Gary Hack of Carr, Lynch, Hack & Sandell, planning and design consultants to the waterfront panel. He said it might be appropriate to create a naturalistic shoreline in some places, which he called a "soft edge."

But what attracted more attention than the coves were the "active use areas," as yet vaguely defined, which also extend to the pierhead line. The uses may be waterborne or based on piers or platforms.

Of the 316 acres from Battery Park City to Pier 84 (44th Street), pierhead to bulkhead, about 75 acres would be given over to basins and about 241 acres to active-use areas. To illustrate the kinds of things that might be built in such areas, Mr. Hack showed a slide of the Rowes Wharf development on the Boston waterfront, a large office, hotel and condominium complex. 'Commercial and Intense'

After his presentation, members of the audience commented. "I was struck by the picture of Rowes Wharf," said Linda Davidoff, executive director of the private Parks Council. "It looked dense, tall, commercial and intense."

Marcy Benstock, executive director of the Clean Air Campaign, said: "Whether it's called a soft edge or an active-use area or any other of the new words that have been made up, the leading groups who opposed Westway strongly oppose any intrusion into this area of the Hudson River."

Mr. Dinkins's chief of staff, Barbara Fife, a waterfront panel member, was quick to object. "I don't think those kind of loaded statements help this process," she told Ms. Benstock.

Sylvia Deutsch, chairwoman of the City Planning Commission, who is also a member of the panel, said: "What continually distresses me is the consistent, persistent level of suspicion. To assume we have a hidden agenda will be harmful to an open dialogue."

---

**From:** Knutson, Lingard

**Sent:** Wednesday, January 06, 2016 8:18 AM

**To:** Montella, Daniel

**Subject:** For fun....

## Lawsuit accuses Hudson River Park Trust of misleading state lawmakers with proposal for Pier 54 renovation

BY [BARBARA ROSS](#)

NEW YORK DAILY NEWS

Updated: Wednesday, January 6, 2016, 12:05 AM

A

A

A

[email](#)

SHARE THIS URL



[JULIA XANTHOS/NEW YORK DAILY NEWS](#)

**The City Club for New York is suing the Hudson River Park Trust, which apparently claimed it only intended to widen the decrepit existing Pier 54 at the foot of W. 13th St.**

A non-profit group that runs a park along Manhattan's Hudson River duped state lawmakers into allowing a huge new concert venue on stilts to be built, a West Side assemblywoman alleges in a new court filing.

Assemblywoman Deborah Glick (D-Manhattan) says in an affidavit that she never would have approved the proposal and doubts her colleagues would have either if they knew the Hudson River Park Trust intended to replace the crumbling Pier 54 with a huge elevated island over an estuary between Piers 54 and 56.

The City Club of New York is suing the trust in Manhattan Supreme Court, arguing that the project needs a formal Environmental Impact Statement and that the trust "deceived" the legislature into approving it by claiming that it only intended to widen the decrepit existing Pier 54 at foot of W. 13th St.

**[GOOGLE TO ANCHOR \\$350M REDEVELOPMENT OF MANHATTAN'S PIER 57](#)**

The new project — dubbed Diller Island — is being funded largely by a \$130 million donation from businessman Barry Diller and his wife Diane von Furstenberg.



AP

**The new project, dubbed Diller Island, is being funded largely by a \$130 million donation from businessman Barry Diller and his wife, designer Diane von Furstenberg.**

Glick says in a recently filed affidavit that she did not intend to get involved in the lawsuit until she read an affidavit by the HRPT executive director Madelyn Wils who "implies" that the legislature provided an "endorsement" of the plan when it passed a bill to give the trust the power to build the island.

"That implication is wrong," Glick said. "At the time the Amendment was being considered, the HRPT led myself and other legislators to believe that its plan was to make minor changes to the then-existing Pier 54. ... HRPT's intention to build an entirely new, large structure in a different location was never discussed."

Glick, who co-sponsored the bill, says Wils and her staff "showed me sketches of what the new pier might look like. They showed me a drawing of a pier that was short and wide and centered over Pier 54's existing footprint."

"Ms. Wils states in her affidavit that the new pier's changed location was never controversial. If that is true, it is only because HRPT did not disclose to the Assembly its intention to location the project between Piers 54 and 56," she says.

AP

**City Club lawyer Richard Emery insisted Tuesday that lawmakers never knew the project would partially cover the footprints of Piers 54 and 56 — plus all the space between the two piers.**

HRPT spokesman James Yolles issued a statement, saying that the “reconstructed pier is designed to conform with size, shape and dimensional limitations prescribed in the 2013 legislation.”

The legislation permitted the Trust to “go beyond the footprint” of the existing Pier 54 — and set a 150,000 square foot limit.

The former pier was 84,300 square feet.

City Club lawyer Richard Emery insisted Tuesday that lawmakers never knew the project would partially cover the footprints of Piers 54 and 56 — and all the space in between.

But Wils in her affidavit said Pier 54's replacement has to be built on stilts — 15 feet above the high water mark — to conform with new federal regulations adopted after Superstorm Sandy blasted through the city three years ago.

Lingard Knutson  
Sr. Transportation and Energy Environmental Analyst  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 25<sup>th</sup> Floor  
New York, NY  
(212) 637-3747

**From:** [Montella, Daniel](#)  
**To:** [Robert Nyman](#)  
**Subject:** FW: Hudson R Pier 54 Project.doc  
**Date:** Thursday, October 29, 2015 4:09:00 PM  
**Attachments:** [Hudson R Pier 54 Project.doc](#)

---

The attached is a comment letter from a seafood company.

- Dan

---

**From:** Matthews, Joan  
**Sent:** Thursday, October 29, 2015 1:33 PM  
**To:** Montella, Daniel; Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** Hudson R Pier 54 Project.doc  
FYI – I will send our draft comments to RA's office today.



**PRIME SEAFOOD**

**"Sustainable Seafood for our Best Restaurants"**

9814 Kensington Parkway, Kensington, MD 20895  
jim@PrimeSeafood.com      www.PrimeSeafood.com  
(Office) 301-949-7778      (Cell) 202-330-9121

October 29, 2015

Dr. Christopher Mallery, Chief  
Regulatory Branch, New York District  
U.S. Army Corps of Engineers  
26 Federal Plaza  
New York, NY 10278

Re: Public Notice NAN-1998-00290 (10/5/15) for Hudson River "Pier 54"/Pier 55 Project

Dear Dr. Mallery:

I am the owner of Prime Seafood ([www.PrimeSeafood.com](http://www.PrimeSeafood.com)) of Kensington, Maryland, the only supplier of solely sustainably managed fish and shellfish to many of Washington DC's top restaurants. As a fisheries biologist with over 35 years of federal fishery conservation and management experience both nationally and internationally, with 20 years of experience in the headquarters of the National Marine Fisheries Service, I am asking you to please stand up for America's ocean fish and millions of American fishermen - both commercial and recreational - by denying any permits or other authorizations for the "Pier 54" - actually the Pier 55, Diller Island - Project in the lower Hudson River. I also strongly oppose using a 15-year-old "Big Permit" for destruction of this irreplaceable nursery habitat for Atlantic Coast fisheries in 490 acres of the Hudson River to approve it.

Approximately 10 percent of the entire East Coast striped bass population is produced in the Hudson River. And this 490 acres of nursery habitat is an important part of the essential overwintering habitat for 35 percent of the Hudson River's striped bass population where they spend the first four years of their life. The striped bass is probably the most important marine species on the United States East Coast both from a recreational and a commercial perspective. Extensive efforts by all the East Coast states from Maine to Florida have gone into producing its recovery from near collapse. Constructing this project at this extremely important location will result in "significant adverse effects" on this entire Hudson River population. It also violates the principles of the Clean Water Act by siting a non-water dependent project in navigable "Waters of the United States" when feasible, land-based alternatives exist. Moreover, this estuarine habitat is also important for the survival of over 100 valuable species, including endangered species, as well as many other commercially and recreationally important coastal marine species. Siting this non-water-dependent project in the River instead of on higher, dryer, safer upland locations would also put people and property in the path of deadly storms (as we have recently seen), and could set ruinous precedents for the misuse of navigable public waterways nationwide. Unless the Corps decides to deny any authorization for the Pier 55/Diller Island project - as the Clean Water Act requires - I request that the Corps hold a public hearing on PN NAN-1998-00290.

Sincerely,

James R. Chambers  
Founder/Owner

**From:** [Montella, Daniel](#)  
**To:** [Robert Nyman](#)  
**Subject:** FW: Hudson River Park Public Notice comment letter  
**Date:** Tuesday, October 27, 2015 3:18:00 PM  
**Attachments:** [NAN 1998 00290 ESW Hudson River Park Trust.pdf](#)

---

- Dan

**From:** Kathy Middleton - NOAA Federal [mailto:kathy.middleton@noaa.gov]

**Sent:** Tuesday, October 27, 2015 2:57 PM

**To:** christopher.s.mallery@usace.army.mil; Daniel Marrone - NOAA Federal;  
steve\_sinkevich@fws.gov; Montella, Daniel; Karen Greene; Lou.chiarella@NOAA.gov; Melissa  
Alvarez

**Subject:** Hudson River Park Public Notice comment letter

Please find the attached comment letter for your files from NMFS.

Kathy

--

Kathy Middleton  
Administrative Assistant  
NMFS - Habitat Conservation Division  
55 Great Republic Drive  
Gloucester, MA 01930  
978-281-9102  
[kathy.middleton@noaa.gov](mailto:kathy.middleton@noaa.gov)



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930-2276

Colonel David A. Caldwell  
District Engineer  
New York District  
U.S. Army Corps of Engineers  
26 Federal Plaza  
New York, NY 10278-0900

OCT 27 2015

RE: NAN-1998-00290, Hudson River Park Trust

Dear Colonel Caldwell:

Reference is made to Public Notice No. NAN-1998-00290, dated October 2, 2015, which describes an application by the Hudson River Park Trust, to construct a new pier recreational facility over the Hudson River, Kings County, State of New York. The proposed project includes the construction of an approximately 121,000 square foot (2.75 acres) platform with two walkway ramp structures attaching it to dry land and a barge mooring platform. The proposed structure would be placed between the pile fields left in place from the former piers 54 and 56. The purpose of the project is to provide a vegetated pier structure with an amphitheater, public restrooms and safe public access to the pier structure within the Hudson River State Park.

#### **The Magnuson-Stevens Fishery Conservation and Management Act (MSA)**

Although we received the public notice on October 6, 2015, we have not yet received an essential fish habitat (EFH) assessment for this project. The MSA requires federal agencies, such as the Corps, to consult with us on projects that may adversely affect EFH. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the consultation process. Once we receive a complete EFH assessment, our EFH regulations allow us 30 days to provide you with conservation recommendations to minimize adverse effects to EFH and federally managed species

The required components of an EFH assessment include: (i) a description of the action, (ii) an analysis of the potential adverse effects of the action on EFH and the managed species, (iii) the Federal agency's conclusions regarding the effects of the action on EFH, and (iv) proposed mitigation, if applicable. We also request that a full permit package be submitted for review with a complete alternatives analysis detailing the applicant's approach to avoidance and minimization of impacts to the resources. In addition, the effects of the proposed project on other NOAA trust species, such as striped bass (*Morone saxatilis*) that overwinter in the project area should be evaluated.

#### **Endangered Species Act**

Section 7 of the Endangered Species Act (16 U.S.C. § 1536(a)(2)) requires Federal agencies to consult with the Secretary of Commerce, through NOAA, to insure that "any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any





endangered species or threatened species or adversely modify or destroy [designated] critical habitat." See also 50 C.F.R. part 402. As ESA listed species of Atlantic sturgeon and shortnose sturgeon are known to occur in the Hudson River, the proposed project has the potential to affect these species, and thus, section 7 coordination will be necessary. As project plans develop, we recommend you consider the following effects of the project on sturgeon:

- Effects of increased suspended sediment;
- Suspension of contaminated sediments;
- Discharge of any other pollutant;
- Loss of prey;
- Any impacts to habitat or conditions that make affected water bodies suitable for these species and,
- Effects of underwater sound pressure waves.

You will be responsible for determining whether the proposed action is likely to affect listed species. When project plans are complete, you should submit your determination of effects, along with justification for the determination, and a request for concurrence to the attention of the Section 7 Coordinator, NMFS, Greater Atlantic Regional Fisheries Office, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930. After reviewing this information, we would then be able to conduct a consultation under section 7 of the ESA. For more information on the ESA section 7 process please visit:

<http://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/consultation/index.html>

So that we have sufficient time to review the requested materials and the EFH assessment, we request a 30 day extension to the comment period in accordance with the Section 404 (MOA) between our agencies. Should you have any questions or wish to discuss EFH matters further, please contact Melissa Alvarez at 732-872-3116 or [melissa.alvarez@noaa.gov](mailto:melissa.alvarez@noaa.gov). Should you have any questions regarding the section 7 process, or future section 7 coordination, please contact Daniel Marrone at (978) 282-8465 or [daniel.marrone@noaa.gov](mailto:daniel.marrone@noaa.gov).

Sincerely,



Louis A. Chiarella  
Assistant Regional Administrator  
Habitat Conservation Division

cc: Corps – C. Mallery  
PRD – D. Marrone  
FWS- S. Sinkevich  
EPA- Region II, D. Montella

**From:** [Montella, Daniel](#)  
**To:** [Robert Nyman](#)  
**Cc:** [Jeff Gratz](#); [Richard Balla](#)  
**Subject:** FW: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
**Date:** Wednesday, October 28, 2015 11:58:00 AM  
**Attachments:** [20151028 - 115241 - OCR-SCAN.pdf](#)

---

- Dan

---

**From:** Matthews, Joan  
**Sent:** Wednesday, October 28, 2015 9:54 AM  
**To:** Balla, Richard; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** RE: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
Coming along nicely. I have more edits – I think we need to set up the whole permit modification issue – that the trust is asking for a permit mod and explain from what. Let's tell that story a bit. It's on my table, so someone stop by and pick up. I hope to see the next version today.  
Thanks.

---

**From:** Balla, Richard  
**Sent:** Tuesday, October 27, 2015 4:55 PM  
**To:** Matthews, Joan; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
Thanks to Bob for his work on it, as well as Dan for his input.  
-rick  
Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 27, 2015 4:43 PM  
**To:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>  
**Subject:** Pier 54 draft letter without "improvements" sentence.  
Pier 54 draft letter without "improvements" sentence.  
Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas ~~will~~ reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Raising the pier is ~~also~~ intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides is appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management

or something about  
a permit mod.

DRAFT

The Trust is requesting (assessing?) what this proposal fits squarely within the permit that the USACE issued to the Trust on 2000.

ok

EXEMPTION  
5

say  
something  
about  
location  
&  
config.

Shedding is an issue of concern to fish habitat when structures are placed in waters.

plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Gratz, Jeff](#)  
**To:** [Nyman, Robert](#); [Montella, Daniel](#); [Balla, Richard](#)  
**Cc:** [Matthews, Joan](#)  
**Subject:** FW: New information re Corps PN NAN-1998-00290  
**Date:** Monday, October 26, 2015 11:13:40 AM  
**Attachments:** [PN1998102615.DOC](#)

---

I just received this from Marcy Benstock.

- Jeff

-----Original Message-----

From: RiverCAC@aol.com [<mailto:RiverCAC@aol.com>]  
Sent: Monday, October 26, 2015 11:06 AM  
To: Enck, Judith <Enck.Judith@epa.gov>; Gratz, Jeff <Gratz.Jeff@epa.gov>  
Cc: melissa.alvarez@noaa.gov; steve.sinkevich@fws.gov; nrpa2@aol.com; cleanaircmpgn02@aol.com; brentblackwelder@yahoo.com; BunnyGabel@gmail.com; carlarnold@mac.com; envjoel@ix.netcom.com; grussian@nypirg.org; jmylod@aol.com; lshapiro@rffund.org; mbernard@nrdc.org; mizeman@nrdc.org; newviv@roadrunner.com; Roger.Downs@Sierraclub.org; zipf@cleanoceanaction.org  
Subject: New information re Corps PN NAN-1998-00290

Regional Administrator Judith Enck

Deputy Director, Clean Water Division Jeffrey Gratz U.S. Environmental Protection Agency, Region 2 Dear Ms. Enck and Mr. Gratz,

The 10/26/15 memo attached sets forth the new information which Clean Air Campaign (CAC) said we would send you regarding important omissions and misrepresentations in the Army Corps NY District's Oct. 2 or Oct. 5, 2015 Public Notice NAN-1998-00290. The Natural Resources Protective Association (NRPA) joins us in this memo.

We would appreciate confirmation that you have received the entire 7-page 10/26/15 memo attached.

We also hope EPA will oppose the proposed authorizations.

Please do not hesitate to call CAC (212-582-2578) if you have any questions or comments.

Sincerely,

Marcy Benstock, Executive Director, Clean Air Campaign Inc. </HTML>

Clean Air Campaign Inc., 307 7th Avenue #606, New York NY 10001, 212-582-2578

Re: Army Corps NY District Public Notice (PN) NAN-1998-00290 Issue Date: 10/5/15 (or 10/2/15); Expiration Date: 11/4/15; ostensibly for the proposed "Pier 54"/Pier 55/Diller Island amphitheater venture in the lower Hudson River, but actually for more  
Date: 10/26/15 Draft  
From: Marcy Benstock, Executive Director, Clean Air Campaign Inc., Open Rivers Project;  
Jim Scarcella, Trustee, Natural Resources Protective Association (NRPA), Staten Island

The Army Corps NY District (the Corps) issued a Public Notice NAN-1998-00290 (PN) on 10/5/15 (or 10/2/15) which is so confusing and misleading that it would be hard for any member of the public to understand it. The full 10-page 2015 PN makes obscure references to various documents in a 5/31/2000 approval package that the Corps issued more than 15 years ago, with Permit Number 1998-00290 (later called NAN-1998-00290). That "Big Permit" issued to the so-called Hudson River Park Trust (HRPT, a State public authority) was for work throughout a staggering 490 acres of critical habitat in the lower Hudson River ("the River" below). No PN reader who is not familiar with various documents in that old 5/31/2000 approval package could be expected to understand what these obscure references mean.

This Clean Air Campaign (CAC) and NRPA memo highlights some of the **most important omissions and misrepresentations in the Corps' October 2015 PN NAN-1998-00290** ("the PN" below). CAC has not yet drafted CAC's comment letter to the Corps on the significant adverse environmental effects and the practicable alternatives to the actual "Pier 54"/Pier 55/Diller Island amphitheater project that would make it illegal under the federal Clean Water Act (CWA) and other laws for the Corps to approve it.

**I. The stated "Activity" and "Location" on the Corps' PN are false and misleading. Pier 55 is a totally new project in and over the River's open undeveloped waters, not a "replacement of...Piers 54."**

The PN claims that the "Activity:" is "Replacement of previously-authorized Piers [*sic*] 54, not-in-place, in a new configuration," and gives its "Location:" as "the foot of West 12th Street." The squib on the Corps website and p. 4 of the full 10-page PN add the phrase "between the locations of Pier 54 and Pier 56 in the Hudson River."

The **totally new Pier 55 project in and over the open undeveloped waters of the Hudson River** which the Corps is proposing to use the old Big Permit to authorize is **not** at the foot of W. 12th St., but in the nearshore waters at the foot of W. 13th St. It is the old Pier 54, not the proposed new Pier 55, which is in the River at the foot of W. 12th St. Attorneys for the applicant, HRPT, are simply calling the completely new Pier 55 project "Pier 54" or a "replacement" in order to make an end-run around legal permitting requirements.

The old year 2000 Big Permit No. 1998-00290 stated clearly on p. 3 that "**All** construction or work on" Pier 54 "**shall take place within the footprint of the existing pier**"--that is, **old Pier 54**. The new Pier 55 project doesn't fit that description. (Please see also below.)

**II.** One of the two **most important sentences** buried in the Corps' Oct. 2015 PN says the Corps will use any comments received **"to determine whether to authorize the [alleged] pier replacement under the existing" Year 2000 Big Permit.** (PN p. 1.)

In view of the specific limitation in the 5/31/2000 Big Permit stating that Pier 54 was only allowed to be rebuilt within the footprint of the old Pier 54, it would be improper and, in our view, illegal for the Corps to authorize Pier 55 in undeveloped open water at a different location. The environmentally critical 490-acre River habitat where this end-run around normal Corps permitting requirements is being attempted consists in part of more than 37 old, new and ghost "piers" which HRPT would like to have rebuilt for non-water-dependent uses, and other fills and "floating" and other structures that misuse the River.

But the extraordinary national value of this prime marine and estuarine habitat for Atlantic Coast fisheries stems from the fact that much of this habitat still consists of **water**. The open undeveloped waters between the hundreds of large and smaller components of HRPT's overall piecemealed real estate venture in this 490-acre habitat in the River are priceless treasures. And even the water beneath the older piers provides habitat that can be used for fish migration, and for benthic feeding and resting for some species.

If the Corps allows this egregious example of a totally new, non-essential Pier 55 project to proceed at one of the treasured open water locations between old Piers 54 and 56, the Corps will be establishing a precedent for filling in **all of the open waters that remain in the irreplaceable 490-acre stretch of the River** governed by the old Big Permit. While that unprecedented (and, we believe, illegal) year 2000 Big Permit did allow for "modifications" under some circumstances, federal agencies were induced to drop their objections to the Big Permit only after HRPT and their partners claimed there would be a net reduction in water coverage and shading over **the entire 490 acres of the River**--that is, in what the Corps' Big Permit referred to as "Segments 3, 4, 5, 6 and 7" of the whole 490 acres of the River, not just in Segment 5 (where Pier 55/Diller Island would be built).

HRPT and their attorneys have been playing a numbers game with federal and state agencies for decades, adding and subtracting acres of water coverage in ways that confuse and mislead. But the year 2000 claim of a net reduction in water coverage and shading throughout this critical 490-acre habitat had proved to be false years ago, even before HRPT proposed adding yet another 2.7-acre Pier 55/Diller Island project to the overall total.

**III.** The **second most important--and totally obscure--sentence** buried on p. 2 of the Oct. 2015 PN relates to **unlimited authorizations to blanket any or all of the open waters of the River with so-called "historic vessels."**

Buried in an innocuous-sounding paragraph on historic places on p. 2 of the PN is the following sentence: "A Programmatic Agreement with the New York State Office of Parks, Recreation and Historic Preservation (NYSHPO) was signed on 3 May 2000 and made part of the issued permit" (that is, the Big Permit). Clever language inserted on many different pages in this 5/3/2000, 21-page Programmatic Agreement is what allows numerous so-called historic vessels to

blanket the River. (Those "vessels" could be as large and deep as the huge mothballed World War II aircraft carrier being used as the so-called Intrepid Sea-Air-Space Museum, for example.)

The "Pier 54"/Pier 55/Diller Island project currently proposed for Corps authorization would have a "support barge" mooring platform connected to it (PN pp. 4 and 7), allegedly for a "support barge" for "possible seasonal mooring." This platform and vessel are depicted in the PN as relatively small. But if the Corps authorizes the "Pier 54"/Pier55/Diller Island project under the terms of the 5/31/2000 Big Permit and its associated Programmatic Agreement, then who knows how many large "historic vessels" might be permanently lodged in the River next to Pier 55, the way the Intrepid was lodged in the River.

**IV. Section 404 of the federal Clean Water Act (CWA) and the regulatory framework that governs the Corps' and EPA's implementation of federal permitting regulations are improperly described in the Oct. 2015 PN. CWA Sec. 404 comes first, before the Corps' "public interest test."**

Buried on p. 2 of the PN is the phrase "Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act...." These 404(b)(1) Guidelines--regulations that have the force of law--can't just be lumped in with a jumble of other "public interest" factors. The Corps must make a determination to grant or deny a permit or other authorization pursuant to the 404(b)(1) Guidelines first.

The following misleading sentence is more prominently featured on p. 1 of the Corps' PN: "The decision whether to issue the construction authorization for the pier replacement request will be based on an evaluation of the probable impact...of the proposed pier replacement on the public interest." Page 1 then goes on to list some--but not all--of the public interest factors that the Corps is allowed to consider--but not until after a proper, legally valid 404 determination is made. The grab bag of public interest factors is only supposed to be considered **if the project complies with EPA's 404(b)(1) regulations.**

It is the Corps' own regulations that state that **the permit must be denied if the project would not comply with the 404(b)(1) regulations. And the "Pier 54"/Pier 55/Diller Island project** (which would have cumulative adverse environmental effects on the 490-acre habitat in the River, and has "practicable alternatives" at higher, dryer, safer upland locations) **would not comply with the relevant 404 (b)(1) standards.** If Pier 55/Diller Island's permit or other authorization must be denied pursuant to 404(b)(1), the Corps is not allowed to jump over the two separate and independent 404(b)(1) tests for granting or denying permits, so that the Corps can arbitrarily declare that granting a permit is in the public interest.

**V. The Corps Oct. 2015 PN does not disclose that the new Pier 55/Diller Island--designed to attract 5,000 people out to a currently open, undeveloped part of the River--would be built in a #1 (highest risk) hurricane evacuation zone.**

The old Big Permit was approved before Hurricanes Katrina and Irene and Superstorm



Sandy hit. Although the Corps has ignored the lessons of these disasters up to now, **Hurricane Patricia** should remind the Corps and other officials **this week** that computer models cannot predict exactly where a hurricane will land, or what its localized impacts will be.

HRPT and its contractors and allies often claim that they will build projects like Pier 55/Diller Island extra-tall to minimize flooding. But Hurricane Patricia's and other hurricanes' gale-force winds and driving rains demonstrated that areas can be devastated--and public safety can be put in jeopardy--from catastrophic storm and hurricane impacts that extend well beyond flooding.

**VI.** The PN misleadingly refers to forests of **new and old concrete, steel pipe and timber pilings** in the River as "fishery habitat enhancement" or "**fishery habitat pile fields**" (p. 2). This is outrageous. **It is the water in the Hudson River that is the fishery habitat--not the ever-multiplying thickets of old and new pilings that HRPT and its partners propose to leave or drive into the River (many of which would be as tall and as wide as trees).**

**VII.** The PN does not clearly disclose the fact that the actual Pier 55 amphitheater and performance space project would result in a **net increase in pilings, fills and structures, and in water coverage and shading, in and over the River**, beyond what was there before.

The wholly new Pier 55 project is often referred to as "Diller Island" because the approximately 2.7-acre main new structure offshore would be linked to the upland by gangways (called "accessway" or "access ramp" on unnumbered pages 7 and 8 of the 10-p. full PN), and would have additional structures underneath it and/or alongside it.

**The total number and dimensions of habitat-threatening pilings and obstructions to fish migration in the vicinity of Piers 54, 55, 56 and 57 would increase significantly.**

The PN describes a dizzying array of "approximate" numbers of new pilings of various types and dimensions to be added to the River to support the new Pier 55 and its accessways, barge mooring platform, protective fender clusters etc. (according to PN pp. 4-5 and 7-8). These would be **in addition to the "approximately...600 existing pilings"** that would remain in the River at Pier 54 and Pier 56. That adds up to a large number of pilings in a limited stretch of the River, just south of Pier 57, where even more pilings can be expected to be added to the River if the Corps approves the latest changes in non-water-dependent uses proposed for Pier 57 as well.

The amphitheater and other performance venues, public restrooms and other fills/structures proposed for Diller Island would have to have sound stages and other heavy equipment trucked in for many performances. Those performances would be designed to attract up to 5,000 people out in the River offshore (some of whom might be conveyed to performances by some kind of vehicle). Thus the new pilings for a Pier 55/Diller Island venture would have to support heavier loads than the old pilings that were left in the River at old Pier 54 and ghost Pier 56 did.

The PN's statement on pp. 4-5 that "the flowable concrete to be placed inside [139 driven...hollow pipe piles] below the plane of Spring High Water...will be confined within the pipe piles and would not result in adverse impacts to Hudson River water quality or aquatic biota" is

disingenuous. It could mislead the casual reader into assuming that the piling structures themselves (not just the concrete inside of them) would not "result in adverse impacts."

In fact, each of these pilings would permanently eliminate habitat throughout the water column within which they would stand. These and other pilings referred to in the PN would eliminate benthic food sources for bottom-feeders, and increase the rate at which sediment accumulates (which can ultimately eliminate a prime open water habitat by turning it into fill to support misplaced real estate development projects). Such pilings can also block fish migration, and more. The hundreds of two-foot-thick and three-foot-thick new concrete pilings plus additional pilings required to support the heavy loads expected at Pier 55 if the Corps approves it would exacerbate all of these adverse habitat and fisheries impacts--not only within the Pier 54 through Pier 62 "development node," but beyond it.

**Water coverage and shading would increase.** The Corps' 5/31/2000 Big Permit stated that the deck on existing pier 54 measured approximately "490 feet by 60 feet" at that time (less than 1 acre of water covered), and now that HRPT has removed Pier 54's deck entirely, even more beneficial sunlight can reach the habitat (and promote photosynthesis) in the River at Pier 54 than it did before. Ghost Pier 56 had already had its deck removed even before HRPT began trying to increase water coverage and shading over the River (while pretending to do the opposite).

Despite the misleading implications on pp. 1 and 4 of the Oct. 2015 PN that HRPT is cutting back rather than doing more work in and over the River, it is clear that the Pier 55/Diller Island project would **increase water coverage and shading** in and over the River.

#### **VIII. The so-called "Hudson River Park" in the PN is not a park.**

The Army Corps is charged with regulating the portion of the so-called Hudson River "Park" (HRP) project that is in the water--namely the 490-acre in-water portion of the 550-acre HRPT project. (HRPT's overall 550-acre project area includes a real park on the upland as well--the green landscaped acreage on 60 acres of upland between the bikeway next to Route 9A and the Hudson River. )

The PN misleadingly refers to the portion of the HRP project that spans 490 acres of the Hudson River a "State Park." Most readers would confuse this "park" with the upland greenway, or perhaps with an upstate park like Adirondack State Park. Very few readers might realize that what the Corps PN is referring to is actually a navigable public waterway. That waterway is not only used for navigation, but also provides a unique and limited marine and estuarine habitat for more than 100 species (including endangered sturgeon species), and is essential for sustaining valuable fisheries from Canada to the Carolinas, up and down the Atlantic Coast.

There are several ways the Corps might approach describing the 490-acre River habitat (within the HRPT project area) where Pier 55/Diller Island would be located more honestly than the October 2015 PN now does. Sec. 3(e) of the NY State Hudson River Park Act describes HRPT's project area simply as everything within a specified set of project area boundaries between Battery Park City and W. 59th Street extended out into the River to the U.S. Pierhead Line offshore. (The

specified boundaries surround 490 acres of Hudson River waters as well as the upland greenway.)

Alternatively, the Corps might describe the portion of the River where Pier 55/Diller Island would be built as the habitat where the Westway highway and Hudson River development project was once proposed. However, if that were done, cumulative adverse habitat and fisheries impacts would still need to be assessed throughout the entire overall 490-acre habitat currently governed by the year 2000 Big Permit that the Corps (improperly) issued to HRPT, and those fisheries impacts would need to include impacts on coastal stocks of striped bass, sturgeon and other migratory species **wherever those species go.**

A third alternative to describe the overall piecemealed project that HRPT is planning, assembling, building, and leasing out in the River would be to describe it as a "mixed- use offshore in-water real estate assemblage, site preparation, and development venture." The only terms the Corps should never use for the River any more if the Corps wishes to invite relevant information from agencies, officials and the public in order to make sound, lawful decisions are "Hudson River Park," "Hudson River State Park," or "the park."

**IX.** The PN says (p. 2) that public comments "are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement [EIS] pursuant to the National Environmental Policy Act [NEPA]." Clearly a **full federal EIS process under NEPA should be carried out by the Corps (not the applicant and its legal and environmental consultants) if the Corps intends to keep authorizing any more non-essential, non-water-dependent, habitat-threatening, view-blocking site creation and development projects such as Pier 55/Diller Island in or on the River.**

No full federal EIS process has ever been carried out--with the draft and final EISs and public hearings required by NEPA--for the 490-acre habitat of extraordinary national importance in the nearshore waters of the lower Hudson River off Manhattan. At least one public official--Assemblymember Deborah Glick--has requested a federal NEPA EIS for Pier 55/Diller Island this year, and a number of U.S. Senators and Congressmembers had made such a request for the entire 490-acre HRPT project area in the River prior to issuance of the Big Permit.

More Atlantic Coast fisheries may crash, and more people may be injured or killed unnecessarily in storms and hurricanes, if the Corps allows HRPT's planned buildout in the 490 acres of critical habitat in the River to continue. Neither Friends of the Earth, the Sierra Club, NYPIRG nor CAC thinks a long EIS process is needed to determine that 15 years of building out into the River should be brought to an end at this point. But if the Corps and other responsible agencies and officials refuse to end the misuse of taxpayers' money and misuse of the River--as they should; and if the Corps and others refuse to protect public safety by ending authorizations for reckless new in-water projects that put people in harm's way in storms and hurricanes; if, in short, building in the River isn't stopped; then a federal EIS is essential before any more projects in the River as ill-conceived and reckless as Pier 55/Diller Island are approved.

**X.** **Both Pier 55/Diller Island and any more building in the River are wildly controversial. And far from being "transparent," the back-room quid-pro-quo deals that have been made**

**to advance such harmful projects and policies so far have been carried out in secret.**

The Oct. 2015 PN says on p. 1 that HRPT "has asked the [Corps] New York District to publish a Public Notice...for improved transparency in the process." One of the many factors that sparked deeply-felt, serious opposition to the Pier 55/Diller Island project was the secrecy with which HRPT and billionaire mogul Barry Diller and entities Mr. Diller controls negotiated the terms of the deal for this project over a two-year period.

It is the Corps' responsibility, not that of an old "permittee" or a current "applicant" like HRPT, to determine when a proposal is sufficiently controversial to necessitate a public hearing; to strengthen the case for the denial of permits or other authorizations; or, at minimum, to trigger an independent, objective, federal NEPA EIS process. Unless HRPT and its partners withdraw their requests for a modification of HRPT's dangerously outdated 5/31/2000 Big Permit, or any other Corps authorizations for Pier 55/Diller Island, the Corps should issue a new, less misleading Public Notice for this project, and provide a significant extension of the deadline for comments on it which would apply to all members of the public.

#

**From:** [Gratz, Jeff](#)  
**To:** [Montella, Daniel](#)  
**Subject:** FW: New information re Corps PN NAN-1998-00290  
**Date:** Monday, October 26, 2015 11:21:28 AM

---

Hi Dan - Do you have another email address to the person below.

- Jeff

-----Original Message-----

From: RiverCAC@aol.com [<mailto:RiverCAC@aol.com>]  
Sent: Monday, October 26, 2015 11:17 AM  
To: Gratz, Jeff <Gratz.Jeff@epa.gov>  
Subject: Re: New information re Corps PN NAN-1998-00290

thanks Jeff. the email to Steve.sinkevich@fws.gov bounced. Would you tell me what his new email is?</HTML>

**From:** [Nyman, Robert](#)  
**To:** [Montella, Daniel](#)  
**Subject:** FW: some developments on the pier 55 comment letter...  
**Date:** Tuesday, November 03, 2015 10:38:27 AM  
**Attachments:** [pier 55 draft comments nov 2 404q -3a.docx](#)  
[pier 55 draft comments nov 3 404q -3a.docx](#)

---

Dan,

I made the minor edits noted, but also removed the highlighted sentence that starts off, "If such structures proliferate..." I'm not sure if you added that sentence or if someone else did. Are you OK with it disappearing?

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Balla, Richard  
**Sent:** Monday, November 02, 2015 5:53 PM  
**To:** Nyman, Robert  
**Cc:** Montella, Daniel  
**Subject:** Bob: some developments on the pier 55 comment letter...  
Bob: some developments on the pier 55 comment letter...

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

Begin forwarded message:

**From:** "Matthews, Joan" <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>  
**Date:** November 2, 2015 at 5:00:25 PM EST  
**To:** "Montella, Daniel" <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>, "Balla, Richard" <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>  
**Cc:** "Gratz, Jeff" <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>  
**Subject:** pier 55 draft comments nov 2 404q -3a.docx

Ok – thanks very much Dan. Minor edits and a question for something to be made more explicit. Please make the change, run it by Jeff, and put it through the concurrence process. I will be in the office tomorrow afternoon, but feel free, Jeff, to send up first thing in the a.m.

Joan

DRIFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. If such structures proliferate, we believe that over time there will be increased desire to rebuild damaged structures as well as pressure to try to make these more flood resistant. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

Commented

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement Memorandum, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

EXEMPTION  
5

**DRAFT**

Sincerely,

Judith A. Enck  
Regional Administrator



DRAFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

Sincerely,

**DRAFT**

Judith A. Enck  
Regional Administrator

**From:** [Gratz, Jeff](#)  
**To:** [Matthews, Joan](#); [Nyman, Robert](#); [Balla, Richard](#); [Montella, Daniel](#)  
**Subject:** Fwd: urgent request  
**Date:** Thursday, October 22, 2015 12:23:57 PM

---

Sent from my iPhone

Begin forwarded message:

**From:** [RiverCAC@aol.com](mailto:RiverCAC@aol.com)  
**Date:** October 22, 2015 at 12:12:06 PM EDT  
**To:** [enck.judith@epa.gov](mailto:enck.judith@epa.gov), [Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)  
**Cc:** [<cleanaircmpgn02@aol.com>](mailto:cleanaircmpgn02@aol.com), [<brentblackwelder@yahoo.com>](mailto:brentblackwelder@yahoo.com),  
[<BunnyGabel@gmail.com>](mailto:BunnyGabel@gmail.com), [<grussian@nypirg.org>](mailto:grussian@nypirg.org), [<jmylod@aol.com>](mailto:jmylod@aol.com),  
[<lshapiro@rffund.org>](mailto:lshapiro@rffund.org), [<mizeman@nrdc.org>](mailto:mizeman@nrdc.org), [<allisontupper@verizon.net>](mailto:allisontupper@verizon.net)  
**Subject:** urgent request

U.S. Environmental Protection Agency (EPA)  
Region 2 Administrator Judith Enck  
Chief, Water Programs, EPA Region 2  
Jeff Gratz  
Dear Ms. Enck and Mr. Gratz,

Please do not submit EPA comments on the version of Army Corps  
Public Notice (PN) NAN-1998-00290 issued (or re-issued) in October 2015 until  
Clean Air Campaign Inc. has sent you new information (in the next few days).  
NYS Assemblymember Deborah Glick has sent the Corps a letter  
requesting a deadline extension for PN NAN-1998-00290 of at least one week  
beyond  
the current 11/4/15 Expiration Date.

Much more than any potential Corps authorization for Pier 54/Pier  
55/Diller Island (bad as that would be) is at stake. Language that almost no  
member of the public would be likely to understand is buried in the Corps'  
"Public Notice"--language that would permit the degradation and ultimate  
destruction of the entire 490-acre nearshore habitat illegally authorized by  
Corps Permit Number NAN-1998-00290 more than 15 years ago. The  
information to

be submitted to you will help explain this.

Please let me know what EPA intends to do, and please send us a copy  
of any EPA correspondence with the Corps related to PN NAN-1998-00290.

Thank you.

Sincerely,

Marcy Benstock, Executive Director, Clean Air Campaign Inc.

**From:** [Matthews, Joan](#)  
**To:** [Montella, Daniel](#); [Nyman, Robert](#)  
**Cc:** [Gratz, Jeff](#); [Balla, Richard](#)  
**Subject:** Hudson R Pier 54 Project.doc  
**Date:** Thursday, October 29, 2015 1:33:11 PM  
**Attachments:** [Hudson R Pier 54 Project.doc](#)

---

FYI – I will send our draft comments to RA's office today.



**PRIME SEAFOOD**

**"Sustainable Seafood for our Best Restaurants"**

9814 Kensington Parkway, Kensington, MD 20895  
jim@PrimeSeafood.com      www.PrimeSeafood.com  
(Office) 301-949-7778      (Cell) 202-330-9121

October 29, 2015

Dr. Christopher Mallery, Chief  
Regulatory Branch, New York District  
U.S. Army Corps of Engineers  
26 Federal Plaza  
New York, NY 10278

Re: Public Notice NAN-1998-00290 (10/5/15) for Hudson River "Pier 54"/Pier 55 Project

Dear Dr. Mallery:

I am the owner of Prime Seafood ([www.PrimeSeafood.com](http://www.PrimeSeafood.com)) of Kensington, Maryland, the only supplier of solely sustainably managed fish and shellfish to many of Washington DC's top restaurants. As a fisheries biologist with over 35 years of federal fishery conservation and management experience both nationally and internationally, with 20 years of experience in the headquarters of the National Marine Fisheries Service, I am asking you to please stand up for America's ocean fish and millions of American fishermen - both commercial and recreational - by denying any permits or other authorizations for the "Pier 54" - actually the Pier 55, Diller Island - Project in the lower Hudson River. I also strongly oppose using a 15-year-old "Big Permit" for destruction of this irreplaceable nursery habitat for Atlantic Coast fisheries in 490 acres of the Hudson River to approve it.

Approximately 10 percent of the entire East Coast striped bass population is produced in the Hudson River. And this 490 acres of nursery habitat is an important part of the essential overwintering habitat for 35 percent of the Hudson River's striped bass population where they spend the first four years of their life. The striped bass is probably the most important marine species on the United States East Coast both from a recreational and a commercial perspective. Extensive efforts by all the East Coast states from Maine to Florida have gone into producing its recovery from near collapse. Constructing this project at this extremely important location will result in "significant adverse effects" on this entire Hudson River population. It also violates the principles of the Clean Water Act by siting a non-water dependent project in navigable "Waters of the United States" when feasible, land-based alternatives exist. Moreover, this estuarine habitat is also important for the survival of over 100 valuable species, including endangered species, as well as many other commercially and recreationally important coastal marine species. Siting this non-water-dependent project in the River instead of on higher, dryer, safer upland locations would also put people and property in the path of deadly storms (as we have recently seen), and could set ruinous precedents for the misuse of navigable public waterways nationwide. Unless the Corps decides to deny any authorization for the Pier 55/Diller Island project - as the Clean Water Act requires - I request that the Corps hold a public hearing on PN NAN-1998-00290.

Sincerely,

James R. Chambers  
Founder/Owner

**From:** [Kathy Middleton - NOAA Federal](#)  
**To:** [christopher.s.mallery@usace.army.mil](mailto:christopher.s.mallery@usace.army.mil); [Daniel Marrone - NOAA Federal](#); [steve\\_sinkevich@fws.gov](mailto:steve_sinkevich@fws.gov); [Montella Daniel](#); [Karen Greene](#); [Lou.chiarella@NOAA.gov](mailto:Lou.chiarella@NOAA.gov); [Melissa Alvarez](#)  
**Subject:** Hudson River Park Public Notice comment letter  
**Date:** Tuesday, October 27, 2015 2:57:38 PM  
**Attachments:** [NAN 1998 00290 ESW Hudson River Park Trust.pdf](#)

---

Please find the attached comment letter for your files from NMFS.

Kathy

--

Kathy Middleton  
Administrative Assistant  
NMFS - Habitat Conservation Division  
55 Great Republic Drive  
Gloucester, MA 01930  
978-281-9102  
[kathy.middleton@noaa.gov](mailto:kathy.middleton@noaa.gov)



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930-2276

Colonel David A. Caldwell  
District Engineer  
New York District  
U.S. Army Corps of Engineers  
26 Federal Plaza  
New York, NY 10278-0900

OCT 27 2015

RE: NAN-1998-00290, Hudson River Park Trust

Dear Colonel Caldwell:

Reference is made to Public Notice No. NAN-1998-00290, dated October 2, 2015, which describes an application by the Hudson River Park Trust, to construct a new pier recreational facility over the Hudson River, Kings County, State of New York. The proposed project includes the construction of an approximately 121,000 square foot (2.75 acres) platform with two walkway ramp structures attaching it to dry land and a barge mooring platform. The proposed structure would be placed between the pile fields left in place from the former piers 54 and 56. The purpose of the project is to provide a vegetated pier structure with an amphitheater, public restrooms and safe public access to the pier structure within the Hudson River State Park.

**The Magnuson-Stevens Fishery Conservation and Management Act (MSA)**

Although we received the public notice on October 6, 2015, we have not yet received an essential fish habitat (EFH) assessment for this project. The MSA requires federal agencies, such as the Corps, to consult with us on projects that may adversely affect EFH. This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the consultation process. Once we receive a complete EFH assessment, our EFH regulations allow us 30 days to provide you with conservation recommendations to minimize adverse effects to EFH and federally managed species

The required components of an EFH assessment include: (i) a description of the action, (ii) an analysis of the potential adverse effects of the action on EFH and the managed species, (iii) the Federal agency's conclusions regarding the effects of the action on EFH, and (iv) proposed mitigation, if applicable. We also request that a full permit package be submitted for review with a complete alternatives analysis detailing the applicant's approach to avoidance and minimization of impacts to the resources. In addition, the effects of the proposed project on other NOAA trust species, such as striped bass (*Morone saxatilis*) that overwinter in the project area should be evaluated.

**Endangered Species Act**

Section 7 of the Endangered Species Act (16 U.S.C. § 1536(a)(2)) requires Federal agencies to consult with the Secretary of Commerce, through NOAA, to insure that "any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any



endangered species or threatened species or adversely modify or destroy [designated] critical habitat." See also 50 C.F.R. part 402. As ESA listed species of Atlantic sturgeon and shortnose sturgeon are known to occur in the Hudson River, the proposed project has the potential to affect these species, and thus, section 7 coordination will be necessary. As project plans develop, we recommend you consider the following effects of the project on sturgeon:

- Effects of increased suspended sediment;
- Suspension of contaminated sediments;
- Discharge of any other pollutant;
- Loss of prey;
- Any impacts to habitat or conditions that make affected water bodies suitable for these species and,
- Effects of underwater sound pressure waves.

You will be responsible for determining whether the proposed action is likely to affect listed species. When project plans are complete, you should submit your determination of effects, along with justification for the determination, and a request for concurrence to the attention of the Section 7 Coordinator, NMFS, Greater Atlantic Regional Fisheries Office, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930. After reviewing this information, we would then be able to conduct a consultation under section 7 of the ESA. For more information on the ESA section 7 process please visit:

<http://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/consultation/index.html>

So that we have sufficient time to review the requested materials and the EFH assessment, we request a 30 day extension to the comment period in accordance with the Section 404 (MOA) between our agencies. Should you have any questions or wish to discuss EFH matters further, please contact Melissa Alvarez at 732-872-3116 or [melissa.alvarez@noaa.gov](mailto:melissa.alvarez@noaa.gov). Should you have any questions regarding the section 7 process, or future section 7 coordination, please contact Daniel Marrone at (978) 282-8465 or [daniel.marrone@noaa.gov](mailto:daniel.marrone@noaa.gov).

Sincerely,



Louis A. Chiarella  
Assistant Regional Administrator  
Habitat Conservation Division

cc: Corps – C. Mallery  
PRD – D. Marrone  
FWS- S. Sinkevich  
EPA- Region II, D. Montella



By email to Joan on Wednesday to Rick & Bob Nymann

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

(due 11/4)

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The proposed pier was not considered in the original permit in terms of configuration and location and it thus is a considerable change not covered under the existing permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice indicates that some features within Segment 5 of the park will not be constructed or have changed, due to improved construction techniques, engineering or design requirements. However, the current permit does not specifically allow for relocation or cumulative coverage calculations and EPA is not in favor of expanding the coverage for individual piers under the current permit.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the wet-flood proofing of the few remaining areas is ~~laudable~~ <sup>laudable</sup> ~~and the actions~~ will reduce damage from storm surge and rising sea levels. More frequent and possibly less intense storms such as nor'easters also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and steps that will be taken to prevent debris from being blown into the water.

Raising the pier also <sup>is also intended to</sup> ~~has a positive impact by increasing~~ the amount of solar exposure below the pier. Figures 3-3 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. However, the plan for the pier includes significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management

D.S.

plan developed and updated periodically to attain or approach zero discharge of nutrients to the river.

who The project's post-construction plans should include operation and maintenance training for staff that will be operating and maintaining the stormwater Best Management Practices (BMP) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Final Since the project location is within a non-attainment area for ozone and <sup>a</sup> maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Balla, Richard](#)  
**To:** [Matthews, Joan](#); [Gratz, Jeff](#)  
**Cc:** [Nyman, Robert](#); [Montella, Daniel](#)  
**Subject:** Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
**Date:** Tuesday, October 27, 2015 4:55:05 PM  
**Attachments:** [Joan mark up of pier 54 Oct 27.pdf](#)  
[Oct 2015 draft EPA comments on Pier 54 application version 10-27-15 5pm.docx](#)

---

Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Thanks to Bob for his work on it, as well as Dan for his input.

-rick

Rick Balla, Chief, Watershed Management Branch

USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert

**Sent:** Tuesday, October 27, 2015 4:43 PM

**To:** Balla, Richard ; Montella, Daniel

**Subject:** Pier 54 draft letter without "improvements" sentence.

Pier 54 draft letter without "improvements" sentence.

Robert Nyman

Regional Coastal Projects Manager

U.S. Environmental Protection Agency

290 Broadway, 24th Floor

New York, NY 10007

212-637-3809



By email to Joan on Wednesday to Rick & Bob Nymann

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

(due 11/4)

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The proposed pier was not considered in the original permit in terms of configuration and location and it thus is a considerable change not covered under the existing permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice indicates that some features within Segment 5 of the park will not be constructed or have changed, due to improved construction techniques, engineering or design requirements. However, the current permit does not specifically allow for relocation or cumulative coverage calculations and EPA is not in favor of expanding the coverage for individual piers under the current permit.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the wet-flood proofing of the few remaining areas is ~~laudable~~ <sup>laudable</sup> ~~and these actions~~ will reduce damage from storm surge and rising sea levels. More frequent and possibly less intense storms such as nor'easters also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and steps that will be taken to prevent debris from being blown into the water.

Raising the pier also <sup>is also intended to</sup> ~~has a positive impact by increasing~~ the amount of solar exposure below the pier. Figures 3-3 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. However, the plan for the pier includes significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management

D.S.

plan developed and updated periodically to attain or approach zero discharge of nutrients to the river.

who The project's post-construction plans should include operation and maintenance training for staff that will be operating and maintaining the stormwater Best Management Practices (BMP) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Final Since the project location is within a non-attainment area for ozone and <sup>a</sup> maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas will reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Raising the pier is also intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides is appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management

plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM<sub>2.5</sub>, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch



JILL! Please make copy of letter for Dan M & me

RICHARD D. EMERY  
ANDREW G. CELLI, JR.  
MATTHEW D. BRINCKERHOFF  
JONATHAN S. ABADY  
EARL S. WARD  
ILANN M. MAAZEL  
HAL R. LIEBERMAN  
DANIEL J. KORNSTEIN  
O. ANDREW F. WILSON  
ELIZABETH S. SAYLOR  
DEBRA L. GREENBERGER  
ZOE SALZMAN  
SAM SHAPIRO  
ALISON FRICK  
DAVID LEBOWITZ  
HAYLEY HOROWITZ  
THEODOR O. OXHOLM  
ALANNA SMALL

EMERY CELLI BRINCKERHOFF & ABADY LLP

ATTORNEYS AT LAW  
600 FIFTH AVENUE AT ROCKEFELLER CENTER  
10<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10020

TELEPHONE  
(212) 763-5000  
FACSIMILE  
(212) 763-5001  
WEB ADDRESS  
www.ecbalaw.com

CHARLES J. OGLETREE, JR.  
DIANE L. HOUK

original

Letter & disc to Bob N.

March 7, 2016

*Via U.S. Mail*

Richard P. Balla  
Chief, Watershed Management Branch  
United States Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

2016 MAR 22 PM 8:13  
U.S. EPA-REGION 2  
CLEANWATER REGULATORY BR

Re: *Hudson River Park Trust Pier 55 Project*

Dear Dr. Balla:

This firm represents The City Club of New York, Robert Buchanan, and Tom Fox in ongoing proceedings related to the Pier 55 project proposed by the Hudson River Park Trust (HRPT). The City Club, Mr. Buchanan, and Mr. Fox previously submitted comments to the United States Army Corps of Engineers requesting that USACE deny HRPT's application for the necessary permits to build the project. EPA submitted comments concerning HRPT's application on November 4, 2015, which it then withdrew and replaced with new comments on November 24.

In December 2015, HRPT released to the public several new documents pertaining to its proposed redevelopment of Pier 57, located just upriver from the Pier 55 site. HRPT issued notice of a public hearing and a public comment period. On February 16, 2016, Mr. Fox submitted comments to HRPT in response to the public notice. On February 22, the City Club and Mr. Buchanan sent a letter to HRPT joining in Mr. Fox's comments.

Today, the City Club, Mr. Fox, and Mr. Buchanan filed a motion in pending Article 78 proceedings in New York County Supreme Court. The motion requests leave to file additional briefing to discuss HRPT's failure to study the cumulative environmental impact of the Pier 55 and Pier 57 projects, as required by law.

To ensure that EPA has a complete record of all materials that may inform its



views on this project, I enclose our clients' memorandum of law and evidentiary materials in support of their motion.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'D. Lieb', with a stylized flourish at the end.

Douglas E. Lieb  
Associate\*

*\* Admitted to practice in California;  
pending admission in New York*

Encl.

**From:** [Matthews, Joan](#)  
**To:** [Montella, Daniel](#); [Nyman, Robert](#)  
**Cc:** [Gratz, Jeff](#); [Balla, Richard](#)  
**Subject:** NEED RESPONSE ASAP - edits to draft EPA comments on Pier 54 app  
**Date:** Thursday, October 29, 2015 2:07:41 PM  
**Attachments:** [Oct 2015 draft EPA comments on Pier 54 application version 2.docx](#)  
**Importance:** High

---

**Need response ASAP** – this will go in the briefing book, which is being compiled for the RA in PR by CEPD.

I have only a few edits – please let me know if they are ok. Feel free to change.

Tx!

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent

discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides isare appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930-2276

FEB 22 2016

Colonel David A. Caldwell  
District Engineer  
New York District  
U.S. Army Corps of Engineers  
26 Federal Plaza  
New York, NY 10278-0900

RE: Application Number NAN-1998-00290  
Hudson River Park Trust Pier 54/55

Dear Colonel Caldwell:

Reference is made to Public Notice No. NAN-1998-00290, dated October 2, 2015, which describes an application by the Hudson River Park Trust (Trust) to construct a new recreational pier over the Hudson River, within the Hudson River Park in New York City, Borough of Manhattan, New York. The proposed Pier 54 project includes the installation of 547 concrete, steel and timber piles for the construction of a 121,000 square foot (2.75 acres) platform structure with two walkways (0.3 acres) connecting the proposed pier to the Hudson River Park's waterfront esplanade. The project also includes the installation of eight timber and steel pile pipe fender clusters and a 150 foot by 10 foot (0.03 acres) seasonal vessel dock to allow the mooring of a 4,000 sf (0.09 acre) amphitheater support vessel for up to six months each year. The new pier would be constructed in the interpier area between two existing pile fields that are remnants of the former Piers 54 and 56. The proposed structure would support vegetated open space, an amphitheater, and public restrooms for general recreational use and cultural events space.

A permit for the construction of the Hudson River Park complex was issued to the Trust in May 2000. This permit authorized a suite of activities including bulkhead repair, bank stabilization, piling repair and replacement, the creation of two beaches, and pier repair, replacement, and rehabilitation. Since 2000, the Trust has constructed several segments of the park as funding has become available. Some of the project components have been changed or eliminated since the permit was issued originally. According to the public notice, these changes do not affect the overall public interest determination that was made for the original permit decision. It is unclear from the information provided if this 16-year old permit is still valid.

Water depths in the project area range from four feet to approximately 10 feet below mean low water (mlw). Shallow water habitat such as this is a valuable and limited habitat type in the lower Hudson River. The nearshore areas of the lower Hudson River and New York Harbor are used as nursery and forage habitat for a number of fish including striped bass (*Morone saxatilis*), tautog (*Tautoga onitis*), weakfish (*Cynoscion regalis*), white perch (*Morone americana*), winter flounder (*Pseudopleuronectes americanus*), windowpane (*Scophthalmus aquosus*), summer flounder (*Paralichthys dentatus*) and bluefish (*Pomatomus saltatrix*), as well other species such as



juvenile river herring and forage species.

As you are aware, the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA) require federal agencies to consult with one another on projects such as this. Because this project may adversely affect essential fish habitat (EFH), the process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of an EFH assessment and generally outlines each agency's obligations. We have reviewed the information contained in the public notice and the EFH assessment. Based upon the information provided, we must conclude that the construction of Pier 54 will have an adverse effect on NOAA trust resources, including federally managed species and their EFH. As a result, we recommend construction of the pier not be authorized as proposed.

### **General Comments**

According to the public notice and the additional information supplied in the EFH assessment, the Trust, through the adoption of the Hudson River Park Act amendment in 2013, has designated Pier 54 as a "park use" pier. This amendment authorized the reconstruction of a new, larger pier outside of Pier 54's historic 1.9 acre footprint. The Trust now proposes to construct this new pier in the interpier area between the remnants of Piers 54 and 56.

While we recognize the applicant's desire to provide recreational opportunities for the residents of New York City, the activities planned on the proposed pier do not need to be located on or over the water. General recreational areas and cultural events space are not water dependent activities and we have not yet seen a thorough analysis of offsite alternatives. As a result, it should be presumed that upland alternatives exist for the uses planned for the new pier unless the Trust demonstrates otherwise in accordance with the requirements of the Clean Water Act Section 404 (b)(1) Guidelines. Further, the proposed structure is larger than what was approved in the original permit and the proposed location was not previously covered by a pier. The information provided to us does not adequately justify this increase in size or the relocation of the proposed structure.

### **Magnuson Stevens Fishery Conservation and Management Act (MSA)**

The project area has been designated as EFH for a number of federally managed species including Atlantic butterfish (*Peprilus triacanthus*), Atlantic sea herring (*Clupea harengus*), bluefish, black sea bass (*Centropristis striata*), red hake (*Urophycis chuss*), scup (*Stenotomus chrysops*), summer flounder, winter flounder, windowpane, clearnose skate (*Raja eglanteria*), little skate (*Leucoraja erinacea*), and winter skate (*Leucoraja ocellata*). We have reviewed the EFH assessment provided with your letter dated January 20, 2016. We disagree with your conclusion that the proposed project is not likely to adversely affect EFH and federally managed species.

The EFH final rule published in the Federal Register on January 17, 2002, defines an adverse effect as, "any impacts which reduce the quality and/or quantity of EFH." The rule further states that:

an adverse effect may include direct or indirect physical, chemical or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat and other ecosystems components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from action occurring within EFH or outside EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

The construction of a new, 2.75 acre pile supported structure over the existing open shallow water habitat will result in an adverse effect to EFH due to the permanent reduction of the habitat quality in the areas under the new pier, as well as the temporary impacts to EFH that will occur during the construction of the proposed structure.

According to the EFH assessment, impacts from the shading of the open water areas will be minimal because the pier's height above the water will allow more light under the pier as compared to the structure authorized by the 2000 permit. It is unclear if the original permit is still valid and can be used as the basis for the no action alternative discussed in the EFH assessment. The original Pier 54 currently exists only as a pile field and appears to have been in this condition since at least 2001. Based upon the existing conditions at the site, the proposed project will adversely affect 2.75 acres of EFH due to the shading effects of the new pier structure and the placement of 597 piles within the open water area between the two former piers. The evaluation of shading effects included in the EFH assessment does not appear to account for the "amphitheater support/interstitial area supported by a combination of piles and decking" that will be located under the pier lowering the elevation of the coverage over the water in some areas and increasing the amount of shading. The assessment also does not explain why the one hour or less of sunlight was used as the basis for comparing the shading effects between the proposed project and the project authorized by the original permit, or how it was determined that the negative effects of the shading occurred only if the area is exposed to one hour or less of sunlight. Even with this assumption as part of the shading effects analysis, approximately one acre of previously uncovered, shallow water interpier habitat will be permanently and fully shaded by the proposed pier structure resulting in the loss of spawning, nursery, forage and overwintering habitat for a number of species including winter flounder and striped bass. The remaining 1.75 acres of habitat under the pier that will be shaded less than 23 hours a day will suffer from some level of habitat degradation as well.

Studies by Able et al. (1995) found that fishery habitat quality is poor under large pile-supported structures as compared to pile fields and interpier areas. Also, diversity, abundance and growth rates of juvenile fishes were lower under large pile-supported structures than in pile fields and interpier areas (Able et al. 1998, Duffy-Anderson and Able 1999). Able et al. (1998) and Duffy-Anderson and Able (1999) also evaluated the growth rates of juvenile winter flounder and tautog caged under large piers at the pier edge, 20 meters (m) and 40 m in from the pier edge as well as 20 m and 40 m out from the pier edge. Growth rates for the fish caged under the pier were "negative" or showed no growth, while the growth rates of the fish at the edge and offshore of the pier were positive. The authors report that the fish caged at the pier edge did show more variable and less rapid growth than at the open water sites and conclude that under-pier environments are poor quality habitats for some species of juvenile fish, and that feeding

conditions for caged fish under the piers are poor while foraging conditions for caged fish are suboptimal at the pier edges.

Low light levels under large piers impair the success of sight feeding fish such as tautog and winter flounder. According to Olla et. al. (1974) and Olla et. al. (1975), tautog are opportunistic sight feeders. Feeding begins shortly after morning twilight and continues up to evening twilight (Collette and Klein-MacPhee 2002). Winter flounder are also sight feeders and are diurnally active in both inshore and offshore waters (Pearcy 1962 in Collette and Klein-MacPhee 2002). While the results of the studies indicate that caged fish experienced reduced growth rates, it is likely that unrestricted, sight feeding fish such as these would avoid areas under the pier due to the adverse feeding conditions. These observations indicate that the majority of the area under the pier will no longer be useful forage habitat for fish, and that fish are likely to avoid the area.

The EFH assessment also does not address adequately the impacts of the proposed project on winter flounder, particularly the loss of spawning habitat that will result from the construction of the new pile supported structure within EFH for their eggs and larvae. In estuaries, EFH for winter flounder eggs is defined as bottom habitats with a substrate of sand, muddy sand, mud, and gravel with water temperatures less than 10° C, salinities between 10 - 30‰, and water depths less than five meters. For larvae, EFH is defined as areas with sea surface temperatures less than 15° C, salinities between 4 - 30‰, and water depths less than six meters. These conditions exist within the proposed project area. The use of the project area as winter flounder spawning habitat and habitat for eggs and larvae will be diminished due the placement of the piles and shading effects of the structure. Tagging studies show that most return repeatedly to the same spawning grounds (Lobell 1939, Saila 1961, Grove 1982 in Collette and Klein - MacPhee 2002). Therefore the loss and degradation of the habitat due to shading and the placement of the piles can have localized, long-term consequences to winter flounder reproduction.

The proposed seasonal work restriction of November 1 to April 30 appears to address only the potential effects of the construction activities on overwintering winter flounder and striped bass, not the permanent habitat loss and degradation due to shading and presence of 547 piles in the interpier shallow water habitat or the effects on winter flounder spawning resulting from the construction activities including the increased turbidity, degradation of the water quality, and loss of the use of habitat during the spawning season. Winter flounder typically spawn in the winter and early spring although the exact timing is temperature dependent and thus varies with latitude (Able and Fahay 1998). Studies done by the New York District for the deepening of the Harbor found winter flounder eggs and larvae present on the Upper Bay and lower Hudson River from mid-January to late-May.

Anadromous fish such as alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), American shad (*Alosa sapidissima*), and striped bass use the Hudson River and its tributaries as spawning, nursery and forage habitat. Alewife and blueback herring spend most of their adult life at sea, but return to freshwater areas to spawn in the spring. Both species are believed to be repeat spawners, generally returning to their natal rivers (Collette and Klein-MacPhee 2002). In the Mid-Atlantic, landings have declined dramatically since the mid-1960s and have remained very low in recent years (ASMFC 2007). Because landing statistics and the number of fish



observed on annual spawning runs indicate a drastic decline in alewife and blueback herring populations throughout much of their range since the mid-1960's, they have been designated as species of concern by NMFS in a Federal Register Notice dated October 17, 2006, (71 FRN 61022). "Species of concern" are those species about which NMFS has some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the Endangered Species Act. These fish are a food source for several federally managed species. Buckel and Conover (1997) in Fahey et al. (1999) reports that diet items of juvenile bluefish include *Alosa* species such as these. Juvenile *Alosa* species have all been identified as prey species for windowpane flounder and summer flounder in Steimle et al. (2000).

The EFH final rule states that the loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat may also be considered adverse effects on EFH. As a result, activities that adversely affect the spawning success and the quality for the nursery habitat of these anadromous fish can adversely affect the EFH for juvenile bluefish, skates, windowpane and summer flounder by reducing the availability of prey items.

Increases in turbidity due to the resuspension of sediments into the water column during construction of the proposed project can degrade water quality, lower dissolved oxygen levels, and potentially release chemical contaminants bound to the fine-grained estuarine/marine sediments. Suspended sediment can also mask pheromones used by these migratory fishes to reach their spawning grounds and impede their migration and can smother immobile benthic organisms and demersal newly-settle juvenile fish (Auld and Schubel 1978; Breitburg 1988; Newcombe and MacDonald 1991; Burton 1993; Nelson and Wheeler 1997).

Noise from the construction activities may also result in adverse effects. Our concerns about noise effects comes from an increased awareness that high-intensity sounds have the potential to harm both terrestrial and aquatic vertebrates (Fletcher and Busnel 1978; Kryter 1984; Richardson et al. 1995; Popper 2003; Popper et al. 2004). Effects may include (a) non-life threatening damage to body tissues, (b) physiological effects including changes in stress hormones or hearing capabilities, or (c) changes in behavior (Popper et al. 2004). In general, such as pile driving that generate noise and cause increased in suspended sediments should be avoided while anadromous fishes are migrating through the area to their upstream spawning grounds. The upstream migration is temperature dependent; the typical timing in the New York Harbor is between March 1 and June 30. The seasonal work restriction of November 1 to April 30 is does not minimize adverse effects to anadromous fishes.

### **Essential Fish Habitat Conservation Recommendations**

Pursuant to Section 305(b)(4)(A) of the MSA we recommend the following EFH conservation recommendation to minimize adverse effects on EFH for winter flounder, summer flounder, bluefish and others:

1. We recommend that the project not be authorized as proposed and alternatives that minimize adverse impacts to EFH be analyzed and considered.

Please note that Section 305(b)(4)(B) of the MSA requires you to provide us with a detailed written response to this EFH conservation recommendations, including a description of measures you have adopted to avoid, mitigate, or offset the impact of the project on EFH. In the case of a response that is inconsistent with these conservation recommendations, Section 305(b)(4)(B) of the MSA also indicates that you must explain your reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with us over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects pursuant to 50 CFR 600.920(k).

Please also note that a distinct and further EFH consultation must be reinitiated pursuant to 50 CFR 600.920(l) if new information becomes available or the project is revised in such a manner that affects the basis for the above EFH conservation recommendations.

### **Fish and Wildlife Coordination Act Species**

We are concerned about the impacts of the proposed project on striped bass. After spawning in the freshwater reaches of the Hudson River, the young-of-year striped bass move into the lower reaches of the estuary. Late larvae and early juveniles favor shallow waters with sluggish currents. The movement of the young fish into the nearshore shallows may be due to the greater prey abundance of these areas and increased feeding success. In addition, striped bass of all age groups, but particularly juveniles younger than age three, overwinter in the upper Harbor and lower Hudson River. The proposed project will reduce the shallow water habitat on the site and affect both the feeding and overwintering habitats of striped bass. As a result, we recommend the project not be authorized as proposed.

### **Endangered Species Act**

Endangered shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) may be found in the Hudson River in the vicinity of the project area at certain times of the year. A request to initiate consultation under Section 7 of the Endangered Species Act (ESA) of 1973 was received by our Protected Resources Division on January 22, 2016. The consultation has been completed and the letter was issued to you on February 18, 2016. For further information regarding the Section 7 consultation, please contact Daniel Marrone at (978) 282-8465 or [daniel.marrone@noaa.gov](mailto:daniel.marrone@noaa.gov).

### **Conclusion**

The proposed project will have an adverse effect on NOAA trust resources including EFH for winter flounder, summer flounder, bluefish and others due to the permanent loss and degradation of the habitat functions currently provided by 2.75 acres of shallow water habitat of the Hudson River. This area serves as spawning, nursery, and forage habitat for federally managed species, anadromous fishes, and forage fish. The project will also result in the loss and degradation of important overwintering habitat for juvenile striped bass. The Trust has not demonstrated that activities planned for the proposed pier including general recreational activities and cultural events, or that the structures proposed, including the amphitheater and rest rooms cannot be located in upland areas that would have less impact on aquatic resources. The Trust has also not demonstrated that the impacts of the proposed project have been minimized to the maximum extent practicable. The pier structure currently proposed is larger than what was previously authorized. The project's location outside the footprint to the original Pier 54 results in adverse

impacts to 2.75 acres of shallow water intertidal area that currently provides spawning habitat for winter flounder and overwintering habitat for striped bass. As a result, we recommend that the project not be authorized as proposed.

If you would like to discuss this matter further, please contact Karen Greene at (732) 872-3023 or karen.greene@noaa.gov. Thank you for your attention to this matter.

Sincerely,



Louis A. Chiarella  
Assistant Regional Administrator  
Habitat Conservation Division

CC: NY Corps – A. Switzer  
PRD – D. Marrone  
FWS- S. Sinkevich  
EPA- Region II, D. Montella

### Literature Cited

- Able, K.W., A.L. Studholme and J.P. Manderson. 1995. Habitat Quality in the New York/New Jersey Harbor Estuary: An Evaluation of Pier Effects on Fishes. Final Report. Hudson River Foundation. New York.
- Able, K.W., J.P. Manderson and A.L. Studholme. 1998. The distribution of shallow water juvenile fishes in an urban estuary: the effects of manmade structures in the lower Hudson River. *Estuaries* 21:731-744
- Able, K.W. and M.P. Fahay. 1998. The first year in the life of estuarine fishes of the Middle Atlantic Bight. Rutgers University Press. New Brunswick, NJ
- Atlantic States Marine Fisheries Commission. 2007. Species Profile: shad and river herring: Atlantic states seek to improve knowledge of stock status and protect populations coast wide. [www.asmfc.org](http://www.asmfc.org). Washington, DC.
- Auld, A.H., and J.R. Schubel. 1978. Effects of suspended sediments on fish eggs and larvae: a laboratory assessment. *Estuar. Coast. Mar. Sci.* 6: 153-164.
- Breitburg, D.L. 1988. Effects of turbidity on prey consumption by striped bass larvae. *Trans. Amer. Fish. Soc.* 117: 72-77.
- Buckel, J.A. and D.O. Conover. 1997. Movements, feeding periods, and daily ration of piscivorous young-of-the-year bluefish, *Pomatomus saltatrix*, in the Hudson River estuary. *Fish. Bull. (U.S.)* 95(4):665-679.
- Burton, W.H. 1993. Effects of bucket dredging on water quality in the Delaware River and the potential for effects on fisheries resources. Prepared for: Delaware Basin Fish and Wildlife Management Cooperative, by Versar Inc., Columbia MD.
- Collette, B.B. and G. Klein-MacPhee. eds. 2002. Bigelow and Schroeder's fishes of the Gulf of Maine. Smithsonian Institution. Washington, D.C.
- Duffy-Anderson, J.T. and K.W. Able. 1999. Effects of municipal piers on the growth of juvenile fishes in the Hudson River estuary: a study across a pier edge. *Marine Biology* 133:409-418.
- Fahey, M.P., P.L. Berrien, D.L. Johnson and W.W. Morse. 1999. Essential Fish Habitat Source Document: Bluefish, *Pomatomus saltatrix* life history and habitat characteristics. U.S. Dep. Commer., NOAA Technical Memorandum NMFS-NE-144.
- Fletcher, J. L. and R. G. Busnel. 1978. Effects of Noise on Wildlife. Academic Press, New York.

Grove, C.A. 1982. Population biology of the winter flounder, *Pseudopleuronectes americanus*, in a New England estuary. M.S. thesis, University of Rhode Island, Kingston, 95 pp.

Kryter, K.D. 1985. The Handbook of Hearing and the Effects of Noise (2nd ed.). Academic Press, Orlando, Florida.

Lobell, M.J. 1939. A biological survey of the salt waters of Long Island. Report on certain fishes: Winter flounder (*Pseudopleuronectes americanus*). New York Conserv. Dept. 28<sup>th</sup> Ann. Rept. Suppl., Part I pp 63-96.

Nelson, D.A., and J.L. Wheeler. 1997. The influence of dredging-induced turbidity and associated contaminants upon hatching success and larval survival of winter flounder, *Pleuronectes americanus*, a laboratory study. Final report, Grant CWF #321-R, to Connecticut Department Environmental Protection, by National Marine Fisheries Service, Milford CT.

Newcombe, C.P., and D.D. MacDonald. 1991. Effects of suspended sediments on aquatic ecosystems. N. Amer. J. Fish. Manag. 11: 72-82.

Olla, B.L., A.J. Bejda, and A.D. Martin. 1974. Daily activity, movements, feeding and seasonal occurrence in tautog, *Tautoga onitis*. Fish. Bull. U.S. 72:27-35.

Olla, B.L., A.J. Bejda, and A.D. Martin. 1975. Activity, movements and feeding behavior of the cunner, *Tautogloabrus adspersus*, and comparison of food habitats with young tautog, *Tautoga onitis*, off Long Island, New York. Fish. Bull. U.S. 73:895-900.

Pearcy, W.C. 1962. Ecology of an estuarine population of winter flounder, *Pseudopleuronectes americanus* (Walbaum). Bull. Bingham Oceanogr. Coll. 18(1):1-78.

Popper, A.N. 2003. Effects of anthropogenic sound on fishes. Fisheries 28:24-31.

Popper, A.N., J. Fewtrell, M.E. Smith, and R.D. McCauley. 2004. Anthropogenic sound: Effects on the behavior and physiology of fishes. MTS J. 37: 35-40.

Richardson, W.J., C.R. Greene Jr., C.I. Malme and D.H. Thomson. 1995. Marine Mammals and Noise. Academic Press, New York.

Saila, S.B. 1961. The contribution of estuaries to the offshore winter flounder fishery in Rhode Island. Proc. Gulf. Carib. Fish. Inst. 14:95-109.

Steimle, F.W., R.A. Pikanowski, D.G. McMillan, C.A. Zetlin, and S.J. Wilk. 2000. Demersal fish and American lobster diets in the Lower Hudson-Raritan Estuary. NOAA Technical Memorandum NMFS-NE-161. Woods Hole, MA. 106 p.

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides is appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Nyman, Robert](#)  
**To:** [Balla, Richard](#)  
**Cc:** [Montella, Daniel](#)  
**Subject:** pier 54  
**Date:** Tuesday, October 20, 2015 4:08:09 PM  
**Attachments:** [Pier 54 Response Options.docx](#)  
[Oct 2015 draft EPA comments on Pier 54 application version 2.docx](#)

---

Rick,

Attached are some bullets that could be put into an email to Joan.

Also attached is a modified draft letter.

Traci has Dan and I scheduled to talk to Jeff and Joan this Friday.

We should touch base before then on this.

Bob

Robert Nyman

Regional Coastal Projects Manager

U.S. Environmental Protection Agency

290 Broadway, 24th Floor

New York, NY 10007

212-637-3809



#### Draft Pier 54 Response Options:

- The Public Notice for Pier 54 was released on October 2 and comments are due November 4.  
<http://www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/2015/Oct15/199800290.pdf>
- We have prepared a draft comment letter and should be prepared to submit it prior to November 4. EPA could submit a 404(q) 3a letter no later than October 30 stating that the project may have an adverse impact on an Aquatic Resource of National Importance <http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>. We do not recommend this for the reasons discussed. (New York State Assemblywoman Glick requested a one week extension to November 9 but we are not sure if that applies to us as well).
- The applicant (Hudson River Park Trust) is requesting that project be authorized by the U.S. Army Corps of Engineers under the existing permit, originally issued in 2000.
- The amount of fill associated with this project is 415 square feet and is restricted to pouring concrete into some of the hollow concrete pilings to make them structurally stronger. This amounts to approximately 0.3% of the total 121,000 square foot project area.
- Climate change issues associated with building this structure over the water appear to be negligible when compared to rebuilding the previous pier 54. Most of the pier is elevated and any potentially vulnerable infrastructure would be wet-waterproofed.
- The environmental impacts associated with the new pier, when compared with replacing the old pier in its former location and configuration, do not appear to warrant an objection from EPA. However, as noted in the draft comment letter, the original permit did not envision the proposed new configuration or location. Therefore, EPA could ask that this project not be included under the current permit and that an application for a new permit be requested USACE.
- EPA's comment letter to USACE is currently drafted for signature by Rick Balla, but it could also be signed by the Clean Water Division director or deputy or the Regional Administrator.

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent

discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides ~~is~~are appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Matthews, Joan](#)  
**To:** [Balla, Richard](#); [Montella, Daniel](#); [Nyman, Robert](#)  
**Cc:** [Gratz, Jeff](#)  
**Subject:** Pier 54 1/2 draft comments to RA  
**Date:** Thursday, October 29, 2015 4:38:07 PM  
**Attachments:** [Document1.docx](#)

---

This is the draft that I sent to the RA. She may request a briefing – will let you know. Thanks for drafting!

Joan

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, include an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent

discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides are appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM<sub>2.5</sub>, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Nyman, Robert](#)  
**To:** [Balla, Richard](#); [Montella, Daniel](#)  
**Subject:** Pier 54 draft letter without "improvements" sentence.  
**Date:** Tuesday, October 27, 2015 4:43:18 PM  
**Attachments:** [Oct 2015 draft EPA comments on Pier 54 application version 2.docx](#)

---

Pier 54 draft letter without "improvements" sentence.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent



discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides isare appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Matthews, Joan](#)  
**To:** [Balla, Richard](#); [Montella, Daniel](#); [Nyman, Robert](#)  
**Cc:** [Gratz, Jeff](#); [Neffleberg, Traci](#)  
**Subject:** Pier 54  
**Date:** Wednesday, June 03, 2015 5:07:21 PM  
**Importance:** High

---

All,

I am not including the Pier 54 update in this week's highlights because I have a lot of questions (see below).

Traci, please schedule a meeting for tomorrow (Thurs) – 30 mins – to discuss.

Thanks,

Joan

**Pier 54 Update:** USACE told us on June 3 that the Hudson River Park Trust sent the application for Pier 54 to the federal agencies in error back in March. The Trust requested, and USACE has extended, the construction period for the Hudson River Park for a number of years (USACE person said that he thinks it was 5 – we will verify). ***[What construction period? When did the Trust request this and when did USACE grant this? What's the authority for extending? Did EPA have a say in that?]*** The Trust is authorized by that extension to do maintenance or construction in the existing permit, so for example, the Trust can remove the old pier deck and do other things if the Corps considers the deteriorating pier to be a hazard, which it has. ***[When did the Corps consider it a deteriorating pier? What's the status of other piers – are any deteriorating?]*** The Corps has not authorized construction of the new Pier 54. ***[But it appears that the Corps is allowing pre-construction work (at best) without public comment.]*** USACE has requested additional information from the Trust ***[about its ongoing work?]***, including what work the Trust has completed in the park, what work it anticipates still doing, etc. ***[only related to Pier 54? Or overall work in the park?]*** That authorization would be done as a modification to the existing permit. The Corps will send a letter to EPA, NOAA and FWS to collaborate on the permit ***[what does this mean? Is this a regulatory mechanism?]***. The Corps will not be releasing a public notice ***[WHY NOT????]***.

#### Draft Pier 54 Response Options:

- The Public Notice for Pier 54 was released on October 2 and comments are due November 4. <http://www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/2015/Oct15/199800290.pdf>
- We have prepared a draft comment letter and should be prepared to submit it prior to November 4. EPA could submit a 404(q) 3a letter no later than October 30 stating that the project may have an adverse impact on an Aquatic Resource of National Importance <http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>. We do not recommend this for the reasons discussed. (New York State Assemblywoman Glick requested a one week extension to November 9 but we are not sure if that applies to us as well).
- The applicant (Hudson River Park Trust) is requesting that project be authorized by the U.S. Army Corps of Engineers under the existing permit, originally issued in 2000.
- The amount of fill associated with this project is 415 square feet and is restricted to pouring concrete into some of the hollow concrete pilings to make them structurally stronger. This amounts to approximately 0.3% of the total 121,000 square foot project area.
- Climate change issues associated with building this structure over the water appear to be negligible when compared to rebuilding the previous pier 54. Most of the pier is elevated and any potentially vulnerable infrastructure would be wet-waterproofed.
- The environmental impacts associated with the new pier, when compared with replacing the old pier in its former location and configuration, do not appear to warrant an objection from EPA. However, as noted in the draft comment letter, the original permit did not envision the proposed new configuration or location. Therefore, EPA could ask that this project not be included under the current permit and that an application for a new permit be requested USACE.
- EPA's comment letter to USACE is currently drafted for signature by Rick Balla, but it could also be signed by the Clean Water Division director or deputy or the Regional Administrator.

**From:** [Matthews, Joan](#)  
**To:** [Montella, Daniel](#); [Balla, Richard](#)  
**Cc:** [Gratz, Jeff](#)  
**Subject:** pier 55 draft comments nov 2 404q -3a.docx  
**Date:** Monday, November 02, 2015 5:00:30 PM  
**Attachments:** [pier 55 draft comments nov 2 404q -3a.docx](#)

---

Ok – thanks very much Dan. Minor edits and a question for something to be made more explicit. Please make the change, run it by Jeff, and put it through the concurrence process. I will be in the office tomorrow afternoon, but feel free, Jeff, to send up first thing in the a.m.

Joan

DRIFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. If such structures proliferate, we believe that over time there will be increased desire to rebuild damaged structures as well as pressure to try to make these more flood resistant. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

Commented

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement Memorandum, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

EXEMPTION  
5

**DRAFT**

Sincerely,

Judith A. Enck  
Regional Administrator

DRIFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. If such structures proliferate, we believe that over time there will be increased desire to rebuild damaged structures as well as pressure to try to make these more flood resistant. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

Commented

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement Memorandum, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

EXEMPTION  
5

**DRAFT**

Sincerely,

Judith A. Enck  
Regional Administrator



Colonel David A. Caldwell  
U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090

Dear Col. Caldwell:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-water dependent purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary damage to the estuary should be avoided.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

Sincerely,

Judith A. Enck  
Regional Administrator

**From:** [Neftleberg, Traci](#)  
**To:** [Nyman, Robert](#); [Montella, Daniel](#); [Balla, Richard](#)  
**Subject:** pier 55 Final letterdraft comments nov 3 404q -3a.docx  
**Date:** Tuesday, November 03, 2015 1:51:51 PM  
**Attachments:** [pier 55 draft comments nov 3 404q -3a.docx](#)

---

## **Balla, Richard**

---

**From:** Matthews, Joan  
**Sent:** Monday, November 02, 2015 5:00 PM  
**To:** Montella, Daniel; Balla, Richard  
**Cc:** Gratz, Jeff  
**Subject:** pier 55 draft comments nov 2 404q -3a.docx  
**Attachments:** pier 55 draft comments nov 2 404q -3a.docx

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Ok – thanks very much Dan. Minor edits and a question for something to be made more explicit. Please make the change, run it by Jeff, and put it through the concurrence process. I will be in the office tomorrow afternoon, but feel free, Jeff, to send up first thing in the a.m.  
Joan



DRIFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. If such structures proliferate, we believe that over time there will be increased desire to rebuild damaged structures as well as pressure to try to make these more flood resistant. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

Commented

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement Memorandum, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

EXEMPTION  
5

**DRAFT**

Sincerely,

Judith A. Enck  
Regional Administrator

**Balla, Richard**

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 12:40 PM  
**To:** Matthews, Joan; Gratz, Jeff  
**Cc:** Pabst, Douglas; Anderson, Kate; Brandt, Peter; Neffleberg, Traci  
**Subject:** All, i had to head home during lunch..i will call in for the staff meeting at 2pm

All, i had to head home during lunch for an unanticipated eldercare appointment later today

I will be working E-awl from 1-3:15pm

I will also call in for the staff meeting @ 2 today.

I will take leave 3:15-4:45; Nesmarie is acting.

I am reachable at x3788 via ec500, (though i will be on a conference call 1-2 on my home land line, 516-678-0032)

Note: Dan & Bob are working on the Pier 55 letter: goal is to address Joan's question and get the letter to and thru Jeff and to RA asap TODAY.

-rick

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)





**Balla, Richard**

---

**From:** Balla, Richard  
**Sent:** Tuesday, November 03, 2015 12:42 PM  
**To:** Neftleberg, Traci  
**Subject:** TRACI: Yes, Joan is probably looking at the pier 55 letter as Bob gave it to her earlier. Maybe you want to make up a routing slip?

TRACI: Yes, Joan is probably looking at the pier 55 letter as Bob gave it to her earlier. Maybe you want to make up a routing slip?

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)



## **Balla, Richard**

---

**From:** Calderon, Wanda  
**Sent:** Friday, December 18, 2015 10:56 AM  
**To:** Balla, Richard  
**Subject:** RE: I can't see the request these emails are referring to  
**Attachments:** ???

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

You can review the attached - I assigned it to CWD, FYI. Thanks and happy holidays!

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Balla, Richard  
**Sent:** Thursday, December 17, 2015 6:15 PM  
**To:** Calderon, Wanda <Calderon.Wanda@epa.gov>  
**Cc:** Arcaya, Alyssa <arcaya.alyssa@epa.gov>; Isaac, Martha <Isaac.Martha@epa.gov>; Pabst, Douglas <Pabst.Douglas@epa.gov>; Nyman, Robert <Nyman.Robert@epa.gov>  
**Subject:** I can't see the request these emails are referring to

I can't see the request these emails are referring to.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

On Dec 17, 2015, at 3:03 PM, Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)> wrote:

Thanks, I'll process out to CWD.

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>  
**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda

**Sent:** Thursday, December 17, 2015 2:46 PM

**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alyssa@epa.gov](mailto:arcaya.alyssa@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>

**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.

**Balla, Richard**

---

**From:** Calderon, Wanda  
**Sent:** Thursday, December 17, 2015 2:46 PM  
**To:** Isaac, Martha; Arcaya, Alyssa; Pabst, Douglas  
**Subject:** ???  
**Attachments:** printPage.pdf

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.



**Request Details**

Status: Initial Evaluation Due Date: 02/25/2016

Submitted Evaluation Assignment Processing Closed

Tracking Number: EPA-R2-2016-002169  
 Requester: Douglas E. Lieb  
 Organization: Emery Cell Bettskenhoff & Albany LLP  
 Requester Has Account: Yes  
 Email Address: dlieb@ecbblaw.com  
 Phone Number: N/A  
 Fax Number: N/A  
 Address: 600 Fifth Avenue  
 1201 Floor  
 City: New York  
 State/Province: NY  
 Zip Code/Postal Code: 10027

Submitted Date: 12/16/2015  
 Perfected Date: 12/16/2015  
 Last Assigned Date: 12/16/2015  
 Fee Limit: \$1,000.00  
 Request Track: Simple  
 Due Date: 02/25/2016  
 Assigned To: Region 2  
 Last Assigned By: N/A

**Submission Details**

**Request Handling**

Requester Info Available to the Public: Yes  
 Request Track: Simple  
 Fee Category: Commercial  
 Fee Waiver Requested: No  
 Fee Waiver Status: N/A  
 Expedited Processing Requested: No  
 Expedited Processing Status: N/A

Request Perfected: Yes  
 Perfected Date: 12/16/2015  
 Acknowledgment Sent Date:   
 Unusual Circumstances?: No  
 5 Day Notifications: No  
 Litigation: No

**Request Description**

Short Description: N/A

All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAW-1998-00290, from November 4, 2013 to November 24, 2015, inclusive.

Description Available to the Public: Yes  
 Has Description Been Modified? No  
 Q2000

**Attached Supporting Files**

No supporting files have been added.

Page 1 of 12

**Case File | Records**

**Case Responsive Records**

No records have been uploaded.

Page 3 of 12

**Case File | Correspondence**

**Correspondence to Requester**

One item found.

Subject	From	To	Date	Detail	Remove
FOIA Request EPA-R2-2016-002169 Submitted	System	Douglas E. Lieb	12/16/2015		

This message is to confirm your request submission to the FOIAonline application. View Request. Request information is as follows:

- Tracking Number: EPA-R2-2016-002169
- Requester Name: Douglas E. Lieb
- Date Submitted: 12/16/2015
- Request Status: Submitted

Description: All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAW-1998-00290, from November 4, 2013 to November 24, 2015, inclusive.

One item found.

**Other Correspondence**

No correspondence has been added.

Page 5 of 12

**Case File**

Direct URL: http://efocalhost:8080/foia/action/public/viewrequest/00474597

**Case Details**

Type of Case: FOIA  
 Fiscal Year: 2016  
 Total Days Pending: 1

Received Date: 12/16/2015  
 Clock Initially Started On: 12/16/2015

Page 2 of 12

**Case File | Consultations**

**Consultations**

No consultations have been added.

Page 4 of 12

**Case File | Appeals**

**Appeals**

No appeals have been filed.

Page 6 of 12



Case File | Financing

Invoice

Total Amount Billed Which Has Been Sent To Requester: \$0.00  
Invoice will not be stored until close out process has begun.

Payments

Total Amount Owed: \$0.00

No payments to display.

Page 7 of 12

Admin Costs

Entries

No entries have been added.

Page 9 of 12

Comments (0)

No comments have been added.

Page 11 of 12

Case File | Restricted Materials

Restricted Materials

No restricted materials have been added.

Page 8 of 12

Assigned Tasks

No tasks have been assigned.

Page 10 of 12

Review

Assigned Reviewers

No reviewers have been assigned.

Page 12 of 12

## **Balla, Richard**

---

**From:** Balla, Richard  
**Sent:** Friday, December 18, 2015 11:49 AM  
**To:** Isaac, Martha  
**Subject:** Re pier 55 FOIA: Martha, thanks. I saw the detailed email after i sent my email yesterday.

Re pier 55 FOIA:

Martha,

thanks.

I saw the detailed email after i sent my email yesterday.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

On Dec 18, 2015, at 8:25 AM, Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)> wrote:

Rick - The request was forwarded at 4:38pm on December 17 - tracking Number :EPA-R2-2016-002169  
FOIA Online Request Due 1-15-16. Thanks.

---

**From:** Balla, Richard  
**Sent:** Thursday, December 17, 2015 6:15 PM  
**To:** Calderon, Wanda  
**Cc:** Arcaya, Alyssa; Isaac, Martha; Pabst, Douglas; Nyman, Robert  
**Subject:** I can't see the request these emails are referring to

I can't see the request these emails are referring to.

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

On Dec 17, 2015, at 3:03 PM, Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)> wrote:

Thanks, I'll process out to CWD.

Wanda Calderon  
FOIA Specialist  
Public Outreach Branch  
Public Affairs Division

---

**From:** Arcaya, Alyssa  
**Sent:** Thursday, December 17, 2015 2:55 PM  
**To:** Calderon, Wanda <[Calderon.Wanda@epa.gov](mailto:Calderon.Wanda@epa.gov)>; Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>

**Cc:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** RE: ???

I think this requests concerns the Pier 55 project on the Hudson River. I don't personally have anything on this, but I believe Rick Balla and Bob Nyman (cc'ed here) will.

---

**From:** Calderon, Wanda

**Sent:** Thursday, December 17, 2015 2:46 PM

**To:** Isaac, Martha <[Isaac.Martha@epa.gov](mailto:Isaac.Martha@epa.gov)>; Arcaya, Alyssa <[arcaya.alyssa@epa.gov](mailto:arcaya.alyssa@epa.gov)>;

Pabst, Douglas <[Pabst.Douglas@epa.gov](mailto:Pabst.Douglas@epa.gov)>

**Subject:** ???

Hello,

Would we have materials to supply toward this FOIA (or a referral)? Thanks for your guidance.

**Balla, Richard**

---

**From:** Balla, Richard  
**Sent:** Friday, December 18, 2015 4:54 PM  
**To:** Matthews, Joan  
**Subject:** FW: EPA letter to ACOE on Pier 55 (Balla to Mallery, 11-24-15)  
**Attachments:** Balla to Mallery re Pier 54 Nov 24 2015.pdf; ATT00001.htm

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 balla.richard@epa.gov





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**NOV 24 2015**

Christopher S. Mallery, Acting Chief  
Regulatory Branch  
U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090

Dear Dr. Mallery:

This letter is in further regard to Public Notice NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. U.S. Environmental Protection Agency's (EPA) previous letter, dated November 4, 2015, is a 404(q) 3(a) letter in which we stated that the proposed project may result in unacceptable impacts to an aquatic resource of national importance. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. Based on further review of this material, the EPA withdraws those concerns. However, in the interest of providing an improved level of protection for the Hudson River, the EPA requests that USACE address the comments below.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The EPA has an interest in reducing marine debris and requests that the applicant establish, implement and periodically review and update a plan to manage storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier and the inclusion of gaps or breaks in the decking are design elements of the proposal that are intended to increase the amount of solar exposure below the pier. The applicant should also consider further reduction of shading through the use of grates or transparent materials in appropriate locations.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 50% Postconsumer content)

some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. The EPA requests that the permit modification, should it be issued, document this offset, and include an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

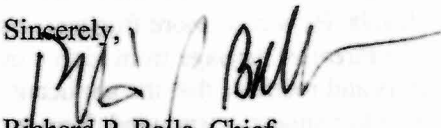
Management of stormwater on the pier is critical to maintaining water quality surrounding the pier. The use of compost for maintaining soil fertility and the non-use of pesticides are appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation and maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact me at 212-637-3788 or via email at [balla.richard@epa.gov](mailto:balla.richard@epa.gov).

Sincerely,

  
Richard P. Balla, Chief  
Watershed Management Branch

**Balla, Richard**

---

**From:** Isaac, Martha  
**Sent:** Thursday, January 14, 2016 4:44 PM  
**To:** Balla, Richard  
**Subject:** RE: Pier 55 FOIA response has been granted an extension until 2/1/16, e-mail from Wanda to follow. -rick

Great. Thanks, Rick.

---

**From:** Balla, Richard  
**Sent:** Thursday, January 14, 2016 4:43 PM  
**To:** Nyman, Robert <Nyman.Robert@epa.gov>; Isaac, Martha <Isaac.Martha@epa.gov>  
**Subject:** Pier 55 FOIA response has been granted an extension until 2/1/16, e-mail from Wanda to follow. -rick

Pier 55 FOIA response has been granted an extension until 2/1/16, e-mail from Wanda to follow. -rick

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)





DRIFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. If such structures proliferate, we believe that over time there will be increased desire to rebuild damaged structures as well as pressure to try to make these more flood resistant. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

Commented

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement Memorandum, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

EXEMPTION  
5





**PRIME SEAFOOD**

**"Sustainable Seafood for our Best Restaurants"**

9814 Kensington Parkway, Kensington, MD 20895  
jim@PrimeSeafood.com      www.PrimeSeafood.com  
(Office) 301-949-7778      (Cell) 202-330-9121

October 29, 2015

Dr. Christopher Mallery, Chief  
Regulatory Branch, New York District  
U.S. Army Corps of Engineers  
26 Federal Plaza  
New York, NY 10278

Re: Public Notice NAN-1998-00290 (10/5/15) for Hudson River "Pier 54"/Pier 55 Project

Dear Dr. Mallery:

I am the owner of Prime Seafood ([www.PrimeSeafood.com](http://www.PrimeSeafood.com)) of Kensington, Maryland, the only supplier of solely sustainably managed fish and shellfish to many of Washington DC's top restaurants. As a fisheries biologist with over 35 years of federal fishery conservation and management experience both nationally and internationally, with 20 years of experience in the headquarters of the National Marine Fisheries Service, I am asking you to please stand up for America's ocean fish and millions of American fishermen - both commercial and recreational - by denying any permits or other authorizations for the "Pier 54" - actually the Pier 55, Diller Island - Project in the lower Hudson River. I also strongly oppose using a 15-year-old "Big Permit" for destruction of this irreplaceable nursery habitat for Atlantic Coast fisheries in 490 acres of the Hudson River to approve it.

Approximately 10 percent of the entire East Coast striped bass population is produced in the Hudson River. And this 490 acres of nursery habitat is an important part of the essential overwintering habitat for 35 percent of the Hudson River's striped bass population where they spend the first four years of their life. The striped bass is probably the most important marine species on the United States East Coast both from a recreational and a commercial perspective. Extensive efforts by all the East Coast states from Maine to Florida have gone into producing its recovery from near collapse. Constructing this project at this extremely important location will result in "significant adverse effects" on this entire Hudson River population. It also violates the principles of the Clean Water Act by siting a non-water dependent project in navigable "Waters of the United States" when feasible, land-based alternatives exist. Moreover, this estuarine habitat is also important for the survival of over 100 valuable species, including endangered species, as well as many other commercially and recreationally important coastal marine species. Siting this non-water-dependent project in the River instead of on higher, dryer, safer upland locations would also put people and property in the path of deadly storms (as we have recently seen), and could set ruinous precedents for the misuse of navigable public waterways nationwide. Unless the Corps decides to deny any authorization for the Pier 55/Diller Island project - as the Clean Water Act requires - I request that the Corps hold a public hearing on PN NAN-1998-00290.

Sincerely,

James R. Chambers  
Founder/Owner

**From:** [Switzer, Amanda M NAN](#)  
**Subject:** Public Notice NAN-1998-00290 by the Hudson River Park Trust for Pier 54 Replacement  
**Date:** Monday, October 05, 2015 4:27:09 PM

---

Hello,

A public notice has been issued for a project within your expressed area of interest. The public notice for this project has been posted on the New York District Corps of Engineers' website:

File Number: NAN-1998-00290

Applicant: Hudson River Park Trust

Location: Foot of West 12th Street, New York City, Borough of Manhattan, New York County, New York

Public Notice Issued: October 2, 2015

Public Notice Expires: November 4, 2015

Please follow this link to view the public notice -

<http://www.nan.usace.army.mil/Missions/Regulatory/RegulatoryPublicNotices/tabid/4166/Article/621815/nan-1998-00290.aspx>

Note that you will need the Adobe Acrobat reader to view this document.

If you wish to provide electronic comments on this email you can reply to this email. If you wish to provide electronic comments on a different public notice, you can contact the New York District Corps of Engineers at: [cenan.publicnotice@usace.army.mil](mailto:cenan.publicnotice@usace.army.mil)

Thank You.

Amanda M. Switzer  
Project Manager  
Eastern Permits Section  
U.S. Army Corps of Engineers  
26 Federal Plaza, Room 1937  
New York, NY 10278-0090  
Phone: 917-790-8618  
Fax: 212-264-4260

**From:** [Nyman, Robert](#)  
**To:** [Matthews, Joan](#)  
**Cc:** [Gratz, Jeff](#); [Balla, Richard](#); [Montella, Daniel](#)  
**Subject:** Re: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
**Date:** Wednesday, October 28, 2015 12:53:56 PM  
**Attachments:** [Oct 2015 draft EPA comments on Pier 54 application version 2.docx](#)

---

Joan,

Here is a revised version with your comments incorporated.

Bob

---

**From:** Montella, Daniel  
**Sent:** Wednesday, October 28, 2015 11:58 AM  
**To:** Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** FW: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
- Dan

---

**From:** Matthews, Joan  
**Sent:** Wednesday, October 28, 2015 9:54 AM  
**To:** Balla, Richard; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** RE: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
Coming along nicely. I have more edits – I think we need to set up the whole permit modification issue – that the trust is asking for a permit mod and explain from what. Let's tell that story a bit.  
It's on my table, so someone stop by and pick up. I hope to see the next version today.  
Thanks.

---

**From:** Balla, Richard  
**Sent:** Tuesday, October 27, 2015 4:55 PM  
**To:** Matthews, Joan; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
Thanks to Bob for his work on it, as well as Dan for his input.  
-rick

Rick Balla, Chief, Watershed Management Branch  
USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788  
[balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert

**Sent:** Tuesday, October 27, 2015 4:43 PM

**To:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>

**Subject:** Pier 54 draft letter without "improvements" sentence.

Pier 54 draft letter without "improvements" sentence.

Robert Nyman

Regional Coastal Projects Manager

U.S. Environmental Protection Agency

290 Broadway, 24th Floor

New York, NY 10007

212-637-3809

**From:** [Nyman, Robert](#)  
**To:** [Montella, Daniel](#)  
**Cc:** [Gratz, Jeff](#); [Balla, Richard](#); [Nyman, Robert](#)  
**Subject:** Re: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
**Date:** Wednesday, October 28, 2015 12:56:48 PM  
**Attachments:** [Oct 2015 draft EPA comments on Pier 54 application version 2.docx](#)

---

Joan,

Here is a revised version with your comments. I may have sent this 2 or 3 times as my computer is having issues.

Bob

---

**From:** Montella, Daniel  
**Sent:** Wednesday, October 28, 2015 11:58 AM  
**To:** Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** FW: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
- Dan

---

**From:** Matthews, Joan  
**Sent:** Wednesday, October 28, 2015 9:54 AM  
**To:** Balla, Richard; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** RE: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
Coming along nicely. I have more edits – I think we need to set up the whole permit modification issue – that the trust is asking for a permit mod and explain from what. Let's tell that story a bit.  
It's on my table, so someone stop by and pick up. I hope to see the next version today.  
Thanks.

---

**From:** Balla, Richard  
**Sent:** Tuesday, October 27, 2015 4:55 PM  
**To:** Matthews, Joan; Gratz, Jeff  
**Cc:** Nyman, Robert; Montella, Daniel  
**Subject:** Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
[Joan, here is a revised draft of the Pier 54 letter \(and a scan of your mark up\); note it is for my signature.](#)  
[Thanks to Bob for his work on it, as well as Dan for his input.](#)



-rick

Rick Balla, Chief, Watershed Management Branch

USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788

[balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert

**Sent:** Tuesday, October 27, 2015 4:43 PM

**To:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>

**Subject:** Pier 54 draft letter without "improvements" sentence.

Pier 54 draft letter without "improvements" sentence.

Robert Nyman

Regional Coastal Projects Manager

U.S. Environmental Protection Agency

290 Broadway, 24th Floor

New York, NY 10007

212-637-3809

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent

discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides isare appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**From:** [Montella, Daniel](#)  
**To:** [Gratz, Jeff](#)  
**Subject:** RE: New information re Corps PN NAN-1998-00290  
**Date:** Monday, October 26, 2015 4:00:00 PM

---

Sorry, it's Steve\_sinkevich@fws.gov

- Dan

-----Original Message-----

From: Gratz, Jeff  
Sent: Monday, October 26, 2015 11:21 AM  
To: Montella, Daniel  
Subject: FW: New information re Corps PN NAN-1998-00290

Hi Dan - Do you have another email address to the person below.

- Jeff

-----Original Message-----

From: RiverCAC@aol.com [<mailto:RiverCAC@aol.com>]  
Sent: Monday, October 26, 2015 11:17 AM  
To: Gratz, Jeff <Gratz.Jeff@epa.gov>  
Subject: Re: New information re Corps PN NAN-1998-00290

thanks Jeff. the email to Steve.sinkevich@fws.gov bounced. Would you tell me what his new email is?</HTML>

**From:** [Nyman, Robert](#)  
**To:** [Balla, Richard](#)  
**Cc:** [Montella, Daniel](#)  
**Subject:** RE: Pier 54 replacement PN has been released.  
**Date:** Tuesday, October 06, 2015 8:23:04 AM  
**Attachments:** [Oct 2015 draft EPA comments on Pier 54 application.docx](#)

---

Rick,

Attached is a slightly modified version of the draft comments that we prepared back in May. This included input from CASD on air issues and CWRB on stormwater issues. We should discuss next steps at next Wednesday's WMB leadership meeting. (I will be out of the office after today for the rest of this week).

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Nyman, Robert  
**Sent:** Monday, October 05, 2015 11:43 AM  
**To:** Balla, Richard ; Montella, Daniel  
**Subject:** Pier 54 replacement PN has been released.  
USACE released the Pier 54 replacement PN on Oct 2. Closing date is November 4.  
<http://www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/2015/Oct15/199800290.pdf>  
Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

## DRAFT

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. While there was inadequate information in the notice to undertake a full review, our comments and references below are based in part on the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of USACE Permit 1998-00299) submitted by the Trust. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. Sheet 29 of 30 in Attachment 3, Engineering Drawings, provides the coverage calculations for all piers and structures in Segment 5 of Hudson River Park. The total permitted overage is currently 9.99 acres for this segment. Sheet 29 indicates that some of the other structures were constructed at a smaller than permitted coverage and therefore the cumulative coverage for this segment is actually 9.90 acres, or 0.09 acres less. However, we do not believe that the current permit specifically allows for cumulative coverage and EPA is not in favor of expanding the coverage for individual piers.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the wet-flood proofing of the few remaining areas is laudable as these actions will reduce damage from storm surge and rising sea levels. More frequent and possibly less intense storms such as nor'easters also pose the threat of damage from high winds and waves. Please describe what steps are being taken to address storm wind damage to objects on the pier and steps that will be taken to prevent debris from being blown into the water.

Raising the piers also has a positive impact by increasing the amount of light reaching the water below the pier. The images Figures 3-5 of attachment 1 are useful in illustrating this. However, the images also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case. Please explain.

EPA supports the comments provided by the National Oceanic and Atmospheric Administration in its letter dated April 16, 2015 regarding fisheries resources. The federal lead agency needs to make a determination of any potential impacts on the endangered shortnose and Atlantic sturgeon. Resident migratory and forage species such as winter flounder, striped bass and alewife should be protected by minimizing the amount of sediment released during construction and adhering to construction timing windows when the species are most vulnerable. In addition, the protection of essential fish habitat should be achieved by adhering to best management practices during construction, including keeping debris out of the water and ensuring the concrete pours inside the hollow pilings do not leak.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. The plan calls for sparing use of slow release fertilizer for turf areas. Please define

sparing use and under what conditions it would be used. Ideally, any use of fertilizer should be eliminated if possible due to the proximity to the river. The temporary sediment barriers numbers 1 and 2 on the “Erosion and Sediment Control Details Peir 54” page don’t seem to be denoted on the master map “Erosion and Sediment Control Plan Pier 54” page. Where does the applicant intend to employ those 2 Best Management Practices (BMP) on the pier? Finally, the project’s post-construction plans should include operation and maintenance training for all staff that will be operating and maintaining the stormwater BMPs in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

USACE should make a general conformity determination with regard to air emissions during construction.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard Balla, Chief  
Watershed Management Branch

**From:** [Nyman, Robert](#)  
**To:** [Matthews, Joan](#)  
**Cc:** [Gratz, Jeff](#); [Balla, Richard](#); [Montella, Daniel](#)  
**Subject:** revised draft Pier 54 letter  
**Date:** Monday, October 26, 2015 9:36:25 AM  
**Attachments:** [Oct 2015 draft EPA comments on Pier 54 application version 2.docx](#)  
[Pier 54 Response Options.docx](#)

---

Joan,

Attached is a modified version of the draft letter on Pier 54 that we discussed last week.

Here is the link to the Section 404(q) dispute resolution process.

<http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>

Also attached are a few bullets that you might find useful.

Reminder - comments are due November 4. Please let us know how you would like to proceed.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809



**From:** [Montella, Daniel](#)  
**To:** [Joan Matthews](#)  
**Cc:** [Jeff Gratz](#); [Richard Balla](#); [Robert Nyman](#)  
**Subject:** revised pier 55 letter info  
**Date:** Monday, November 02, 2015 12:26:00 PM  
**Attachments:** [Hudson River Park public hearings.docx](#)  
[Pier 54 12 draft comments to RA.msg](#)  
[pier 55 draft comments nov 2 404g -3a.docx](#)

---

See attached. A 3a letter doesn't need much, so I lined out most of the specifics, we can put such comments in our follow up letter. New verbiage is in red.

.

- Dan

## Hudson River Park public hearings

**Big Permit – no Corps hearing, just local & state.** The Corps issued the initial public notice for this project on June 16, 1998, to which EPA objected due to a lack of information. A supplemental public notice was issued on February 18, 1999.

DEC SEQRA: A notice of public hearing, dated July 15, 1998, was published in the Department's Environmental Notice Bulletin of July 22, 1998 and the July 28, 1998 edition of The Daily News. As announced in the hearing notice, a legislative hearing was held in the evening of September 17, 1998 at the College of Insurance in lower Manhattan. There were over 100 people in attendance of which 43 individuals spoke. The speakers were almost evenly divided in favor and in opposition to the proposed project.

(for more info, see <http://www.dec.ny.gov/hearings/11342.html>)

### **Pier 55 – notice & hearing held by Trust**

In November 2014, the Trust announced that Barry Diller had agreed to make a large contribution to fund the reconstruction of Pier 54 as a public park space with performance spaces, and to offer cultural programming to the public, all pursuant to a proposed lease between a not-for-profit corporation ("Pier55, Inc.") to be funded by the donation, and the Trust.

Because the term of the proposed lease would be in excess of 10 years, and because the proposed uses on the pier required an amendment to the Park's 1998 General Project Plan, the Trust commenced a "Significant Action" process as required by the Hudson River Park Act. **The Significant Action process requires a formal public notice, a public comment period of at least sixty days, and a public hearing** before the Trust Board of Directors may vote.

**The Trust noticed the proposed lease and the proposed General Project Plan Amendment on November 17, 2014.** At the same time, it also made the draft lease, proposed General Project Plan Amendment, and the Draft Environmental Assessment Form and Supplemental Studies ("the Draft EA") available for public review and comment on this website. The Draft EA comprehensively analyzed the potential impacts of the proposed project pursuant to the New York State Environmental Quality Review Act (SEQRA) and its implementing regulations and used the New York City's City Environmental Quality Review (CEQR) Technical Manual as a general guide on the methodologies and impact criteria for evaluating the proposed project's potential impacts on the various environmental areas of analysis.

In accordance with the Act's requirements, the Notice of the Significant Action was published in the following places: The Trust's website; The City Record; the New York State Contract Reporter; The New York Post; and The Villager. Additionally, and as required by the Act, the Notice was circulated to Community Boards 1, 2 and 4; to the City Planning Commission; to the Hudson River Park Advisory Council; to local elected officials representing communities neighboring the Park; and to other interested community leaders, neighbors, partners and organizations.

**In addition, the Trust presented the proposed project at two meetings of the Community Board 2 Parks and Waterfront Committee, on December 3, 2014 and January 7, 2015.** In both of these meetings, the Trust and representatives of Pier55, Inc. responded to questions from community board members and the general public. At a subsequent meeting on January 22, Community Board 2 passed a resolution in support of the project but with some qualifications. Additionally, the Trust presented the proposed project to the Hudson River Park Advisory Council on December 15, 2014.

**On January 12, 2015, the Trust held its own public hearing** on the proposed lease and the proposed GPP Amendment. Comments on the Draft EA were also accepted. In addition to the comments submitted at the January 12 hearing, the Trust received written comments by U.S. mail and electronic mail, as well as comments at the two Community Board 2 committee meetings mentioned above. In all, 100 comments were received from elected officials, organizations and individuals. All comments received as part of the Significant Action process, as well as the Community Board 2

resolution and the issues associated with it, were addressed in the Summary of Comments/Responses, which was provided to the Trust's Directors in advance of their vote

**From:** [Matthews, Joan](#)  
**To:** [Balla, Richard](#); [Montella, Daniel](#); [Nyman, Robert](#)  
**Cc:** [Gratz, Jeff](#)  
**Subject:** Pier 54 1/2 draft comments to RA  
**Date:** Thursday, October 29, 2015 4:38:07 PM  
**Attachments:** [Document1.docx](#)

---

This is the draft that I sent to the RA. She may request a briefing – will let you know. Thanks for drafting!

Joan

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, include an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent

discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides are appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

DRIFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. If such structures proliferate, we believe that over time there will be increased desire to rebuild damaged structures as well as pressure to try to make these more flood resistant. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

Commented

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement Memorandum, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

EXEMPTION  
5

**DRAFT**

Sincerely,

Judith A. Enck  
Regional Administrator



**From:** [DARTER Sys Admin](#)  
**To:** [Montella, Daniel](#)  
**Subject:** Today's DARTER Alerts  
**Date:** Friday, October 30, 2015 7:19:23 AM

---

## **Public Notices coming due in 5 days**

Comments on the following Public Notices are due by 11/04/2015.

Public Notice: [Hudson River Park Trust - Piers 54 Replacement](#)

Folder: NAN-1998-00290

Permit Application: Placeholder for Permit App

Review Status: Pending

Assigned to: Robert Nyman

Total Public Notices coming due: 1

## **Pending Public Notices due today**

The following Public Notices are due today but are still categorized as "Pending". Please re-categorize these Public Notices as appropriate.

Public Notice: [Thomas Sheridan-Boat slip-Lewes and Rehoboth Canal](#)

Folder: NAP-2015-01012

Permit Application: Sheridan Maintenance Dredging SX

Review Status: Pending

Assigned to: Robert Montgomerie

Total Pending Public Notices due: 1

Link to DARTER application: <https://ofmext.epa.gov/darter>

Sent from DARTER database on 10/30/2015 7:19 AM

[darter\_data/owpub/vmwaters1.rtpnc.epa.gov]

## Nyman, Robert

---

**From:** Isaac, Martha  
**Sent:** Thursday, December 17, 2015 4:38 PM  
**To:** Balla, Richard  
**Cc:** Nyman, Robert  
**Subject:** Tracking Number :EPA-R2-2016-002169 FOIA Online Request Due 1-15-16

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Rick - Please let me know if you have any responsive records. Thanks.

### Request Details

Tracking Number :EPA-R2-2016-002169  
Requester : Douglas E. Lieb  
Organization :Emery Celli Brinckerhoff & Abady LLP  
Requester Has Account :Yes  
Email Address :dlieb@ecbalaw.com  
Phone Number : N/A  
Fax Number : N/A  
Address :600 Fifth Avenue  
10th Floor  
City :New York  
State/Province : NY  
Zip Code/Postal Code : 10027

### Short Description:

All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive.

\*\*\*\*\*

Martha Isaac  
Clean Water Division  
USEPA  
290 Broadway, New York, NY 10007  
212-637-3761  
Alternate Work Location: Tuesday and Thursday (718) 277-7593  
isaac.martha@epa.gov

## Nyman, Robert

---

**From:** Brandt, Peter  
**Sent:** Tuesday, January 26, 2016 9:58 AM  
**To:** Balla, Richard; Matthews, Joan; Gratz, Jeff; Montella, Daniel; Nyman, Robert; Martin, John; Shore, Berry; Pabst, Douglas; Anderson, Kate; Jackson, Wayne  
**Subject:** FYI: Inside EPA 404 clip.

<http://insideepa.com/daily-news/eab-case-tests-epa-reversal-concerns-over-corps-404-water-permit>

**From:** [Isaac, Martha](#)  
**To:** [Balla, Richard](#)  
**Cc:** [Nyman, Robert](#)  
**Subject:** Tracking Number :EPA-R2-2016-002169 FOIA Online Request Due 1-15-16  
**Date:** Thursday, December 17, 2015 4:37:59 PM

---

Rick - Please let me know if you have any responsive records. Thanks.

**Request Details**

Tracking Number :EPA-R2-2016-002169

Requester : Douglas E. Lieb

Organization :Emery Celli Brinckerhoff & Abady LLP

Requester Has Account :Yes

Email Address :dlieb@ecbalaw.com

Phone Number : N/A

Fax Number : N/A

Address :600 Fifth Avenue

10th Floor

City :New York

State/Province : NY

Zip Code/Postal Code : 10027

**Short Description:**

All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive.

\*\*\*\*\*

Martha Isaac

Clean Water Division

USEPA

290 Broadway, New York, NY 10007

212-637-3761

Alternate Work Location: Tuesday and Thursday (718) 277-7593

isaac.martha@epa.gov

## Matthews, Joan

---

**From:** Matthews, Joan  
**Sent:** Friday, December 18, 2015 4:56 PM  
**To:** Enck, Judith  
**Subject:** Pier 54 Letter from EPA to the Corps  
**Attachments:** Balla to Mallery re Pier 54 Nov 24 2015.pdf





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

NOV 24 2015

Christopher S. Mallery, Acting Chief  
Regulatory Branch  
U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090

Dear Dr. Mallery:

This letter is in further regard to Public Notice NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. U.S. Environmental Protection Agency's (EPA) previous letter, dated November 4, 2015, is a 404(q) 3(a) letter in which we stated that the proposed project may result in unacceptable impacts to an aquatic resource of national importance. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. Based on further review of this material, the EPA withdraws those concerns. However, in the interest of providing an improved level of protection for the Hudson River, the EPA requests that USACE address the comments below.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The EPA has an interest in reducing marine debris and requests that the applicant establish, implement and periodically review and update a plan to manage storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier and the inclusion of gaps or breaks in the decking are design elements of the proposal that are intended to increase the amount of solar exposure below the pier. The applicant should also consider further reduction of shading through the use of grates or transparent materials in appropriate locations.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that

some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. The EPA requests that the permit modification, should it be issued, document this offset, and include an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

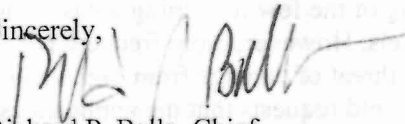
Management of stormwater on the pier is critical to maintaining water quality surrounding the pier. The use of compost for maintaining soil fertility and the non-use of pesticides are appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation and maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact me at 212-637-3788 or via email at [balla.richard@epa.gov](mailto:balla.richard@epa.gov).

Sincerely,

  
Richard P. Balla, Chief  
Watershed Management Branch



## Matthews, Joan

---

**From:** Enck, Judith  
**Sent:** Monday, December 21, 2015 3:58 PM  
**To:** Matthews, Joan  
**Subject:** pier 54

Hi joan: when you get a moment send me the first letter we sent to the corps asking for more time tx

JILL! Please make copy of letter for Dan M & me,

RICHARD D. EMERY  
ANDREW G. CELLI, JR.  
MATTHEW D. BRINCKERHOFF  
JONATHAN S. ABADY  
EARL S. WARD  
ILANN M. MAAZEL  
HAL R. LIEBERMAN  
DANIEL J. KORNSTEIN  
O. ANDREW F. WILSON  
ELIZABETH S. SAYLOR  
DEBRA L. GREENBERGER  
ZOE SALZMAN  
SAM SHAPIRO  
ALISON FRICK  
DAVID LEBOWITZ  
HAYLEY HOROWITZ  
THEODOR O. OXHOLM  
ALANNA SMALL

EMERY CELLI BRINCKERHOFF & ABADY LLP

ATTORNEYS AT LAW  
600 FIFTH AVENUE AT ROCKEFELLER CENTER  
10<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10020

TELEPHONE  
(212) 763-5000  
FACSIMILE  
(212) 763-5001  
WEB ADDRESS  
www.ecbalaw.com

CHARLES J. OGLETREE, JR.  
DIANE L. HOUK

original

Letter & dix to Bob N.

March 7, 2016

*Via U.S. Mail*

Richard P. Balla  
Chief, Watershed Management Branch  
United States Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

2016 MAR 22 PM 8:13  
U.S. EPA-REGION 2  
CLEANWATER REGULATORY BR

Re: *Hudson River Park Trust Pier 55 Project*

Dear Dr. Balla:

This firm represents The City Club of New York, Robert Buchanan, and Tom Fox in ongoing proceedings related to the Pier 55 project proposed by the Hudson River Park Trust (HRPT). The City Club, Mr. Buchanan, and Mr. Fox previously submitted comments to the United States Army Corps of Engineers requesting that USACE deny HRPT's application for the necessary permits to build the project. EPA submitted comments concerning HRPT's application on November 4, 2015, which it then withdrew and replaced with new comments on November 24.

In December 2015, HRPT released to the public several new documents pertaining to its proposed redevelopment of Pier 57, located just upriver from the Pier 55 site. HRPT issued notice of a public hearing and a public comment period. On February 16, 2016, Mr. Fox submitted comments to HRPT in response to the public notice. On February 22, the City Club and Mr. Buchanan sent a letter to HRPT joining in Mr. Fox's comments.

Today, the City Club, Mr. Fox, and Mr. Buchanan filed a motion in pending Article 78 proceedings in New York County Supreme Court. The motion requests leave to file additional briefing to discuss HRPT's failure to study the cumulative environmental impact of the Pier 55 and Pier 57 projects, as required by law.

To ensure that EPA has a complete record of all materials that may inform its

views on this project, I enclose our clients' memorandum of law and evidentiary materials in support of their motion.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'D. E. Lieb', written in a cursive style.

Douglas E. Lieb  
Associate\*

*\* Admitted to practice in California;  
pending admission in New York*

Encl.

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, January 29, 2016 10:50 AM  
**To:** Isaac, Martha; Calderon, Wanda; Balla, Richard  
**Subject:** FW: foia # 2169  
**Attachments:** printPage (1).pdf; Pier 54 FOIA response Jan 29 2016.pdf

Martha/Wanda:

Attached is a compilation of the material that is responsive to the FOIA request. There are a number of duplicates within the file because several people may have had the same material. Please let me know if you need anything else.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Calderon, Wanda  
**Sent:** Thursday, January 14, 2016 4:44 PM  
**To:** Balla, Richard ; Nyman, Robert  
**Subject:** foia # 2169

Hi gentle men,

As stated in our conversation (RB), I sought an extension of time based on consultation until 2/1<sup>st</sup>. See attached online screenshot for your reference. Thanks and enjoy your weekend!

## Nyman, Robert

---

**From:** Gratz, Jeff  
**Sent:** Monday, January 25, 2016 5:28 PM  
**To:** Nyman, Robert; Montella, Daniel; Balla, Richard  
**Cc:** Matthews, Joan  
**Subject:** FW: DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River  
**Attachments:** SCAC DEC Diller Island letter.pdf; ATT00001.htm

Fyi - Jeff

---

**From:** Enck, Judith  
**Sent:** Monday, January 25, 2016 5:20 PM  
**To:** Matthews, Joan ; Gratz, Jeff  
**Subject:** Fwd: DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River

Sent from my iPhone

Begin forwarded message:

**From:** Roger Downs <[roger.downs@albany.twcbc.com](mailto:roger.downs@albany.twcbc.com)>  
**Date:** January 25, 2016 at 4:33:44 PM EST  
**To:** <[basil.seggos@dec.ny.gov](mailto:basil.seggos@dec.ny.gov)>, <[christopher.s.mallery@usace.army.mil](mailto:christopher.s.mallery@usace.army.mil)>  
**Cc:** <[DEP.R2@dec.ny.gov](mailto:DEP.R2@dec.ny.gov)>, <[Enck.Judith@epamail.epa.gov](mailto:Enck.Judith@epamail.epa.gov)>  
**Subject:** DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River

Dear Commissioner Seggos-

Please find the attached comments on DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River.

Thanks,

Roger Downs  
Conservation Director  
Sierra Club Atlantic Chapter  
353 Hamilton Street  
Albany, NY 12210  
(518) 426-9144



January 25, 2016

Basil Seggos, Acting Commissioner  
NYS Department of Environmental Conservation  
625 Broadway  
Albany NY 12233-1011

Iver M. Anderson  
NYSDEC Region 2  
47-40 21st St.  
Long Island City NY 11101

Re: DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River

Dear Commissioner Seggos and Mr. Anderson:

The Sierra Club Atlantic Chapter urges the Department of Environmental Conservation (DEC) to deny the Hudson River Part Trust (HRPT) application for modification of existing permits as well as an existing Clean Water Act Water Quality Certification that would facilitate more building in and over the waters of the Hudson River off Manhattan. The current application, as proposed by the HRPT, is in fact intended not simply to modify previous approvals for a smaller Pier 54 at a different location, but to allow a totally new, manmade island and amphitheater ("Pier 55," also called Diller Island) to be built in open water.

We recognize that the Department of Environmental Conservation approaches the protection of the waters of the United States with a commitment to first avoid any disturbance of aquatic or wetland habitats before considering certification of any intrusive project. Often the decision to allow disturbance or destruction of water resources is influenced by the perceived public benefit and necessity of a proposal, and whether the urgency of such a project precludes other options or alternatives. In the case of Diller Island, every aspect of this project is unnecessary, voluntary and superfluous in the context of public need.

The proposed Diller Island structures would cover what is now and forever has been open water. The large numbers of pilings needed to support the weight of a massive amphitheater into the riverbed will cause unacceptable and irreversible impacts to the local Hudson River habitat and the ecosystems it supports. Furthermore, what HRPT and the Environmental Notice Bulletin are calling a public park and cultural events space is in fact a commercial amphitheater project, designed to generate revenue for Barry Diller and his investment partners, in spite of substantial public subsidies.


This project is not truly water-dependent, and its significant destruction of coastal marine habitat

should make it impermissible under the federal Clean Water Act. Siting the Diller Island project in the River - instead of on a higher, dryer, safer upland location - would put people and property in the path of deadly storms and could set precedents for the misuse of navigable public waterways across New York and the rest the country. The DEC has a heightened responsibility to anticipate the catastrophic impacts of climate change as sea level rise and the increased frequency of storm surges will put ever-larger numbers of New Yorkers in harms way. As evidenced by Governor Cuomo's NY Rising program and the proposed creation of the Climate Change Mitigation and Adaptation Program through his 2016-17 Executive Budget Proposal the State is investing significant resources in smart climate adaptation strategies. Diller Island goes against the grain of all these efforts. There are plenty of underutilized upland locations throughout the five boroughs of NYC that could make good use of innovative design and funding to create meaningful public open space without risking public safety and damaging critical aquatic habitat.

In weighing clean water certification for this project, the DEC must also take into account how climate change already is inflicting tremendous stress on marine biodiversity, which only increases the importance of protecting our remaining estuarine habitats. The entire river corridor along the western shore of Manhattan Island constitutes irreplaceable spawning, nursery and feeding grounds for over 100 fish species including the endangered shortnose and Atlantic sturgeon. Numerous studies have demonstrated that while individual piers left in place may have some habitat value, mass platforms on piers, as is proposed for Diller Island, create dense shaded areas that inhibit biotic function and diminish use by important fishery species.

It is in this context that The Sierra Club is alarmed that DEC could find that this project would not have a significant impact on the environment in its SEQRA determination, cutting off any further study of the potentially devastating and long-lasting effects upon critical aquatic habitat and public safety. In Addition, the Pier 55 Diller Island project is only part of a much larger plan to develop the river over the 490-acre "Hudson River Park" area, with connections between the piers (such as a likely connection with Pier 57 to the north) and real estate developments at multiple other pier locations. Such misplaced building out into a priceless Hudson River habitat must be stopped. If permitted and constructed, Diller Island would become a symbol of indifference to climate change and the erosion of marine biodiversity at a time when the city requires a visionary approach to this developing global catastrophe. The Sierra Club Atlantic Chapter urges you to deny the application for the permit modifications HRPT has requested and to deny any new permits or Water Quality Certification for Pier 55/Diller Island.

Thank you for consideration of these comments,

A handwritten signature in cursive script that reads "Roger Downs".

Roger Downs, Conservation Director  
Sierra Club Atlantic Chapter  
353 Hamilton Street, Albany NY 12210

cc: U.S. Army Corps of Engineers  
U.S. Environmental Protection Agency

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 27, 2015 11:54 AM  
**To:** Balla, Richard  
**Subject:** Joans pier 54 mark up and revised letter  
**Attachments:** Joan mark up of pier 54 Oct 27.pdf; Oct 2015 draft EPA comments on Pier 54 application version 2.docx

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809



By email to Joan on Wednesday to Rick & Bob Nymann

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

(due 11/4)

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The proposed pier was not considered in the original permit in terms of configuration and location and it thus is a considerable change not covered under the existing permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice indicates that some features within Segment 5 of the park will not be constructed or have changed, due to improved construction techniques, engineering or design requirements. However, the current permit does not specifically allow for relocation or cumulative coverage calculations and EPA is not in favor of expanding the coverage for individual piers under the current permit.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the wet-flood proofing of the few remaining areas is ~~laudable~~ <sup>laudable</sup> ~~and these actions~~ will reduce damage from storm surge and rising sea levels. More frequent and possibly less intense storms such as nor'easters also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and steps that will be taken to prevent debris from being blown into the water.

Raising the pier also <sup>is also intended to</sup> ~~has a positive impact by increasing~~ the amount of solar exposure below the pier. Figures 3-3 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. However, the plan for the pier includes significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management

D.S.

plan developed and updated periodically to attain or approach zero discharge of nutrients to the river.

who The project's post-construction plans should include operation and maintenance training for staff that will be operating and maintaining the stormwater Best Management Practices (BMP) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Final Since the project location is within a non-attainment area for ozone and <sup>a</sup> maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the proposed pier was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice indicates that some features within Segment 5 of the park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. While the current permit does not specifically allow for relocation or cumulative coverage calculations, there are features of the new design, as noted below, that appear to be improvements over rebuilding Pier 54 as it was originally constructed. The additional 0.8 acres of coverage must be offset by reducing the amount of coverage of other features that were included in the original permit.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas will reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Raising the pier is also intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is build are likely very close to the bottom of the river. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. However, the plan for the pier includes significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager

should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the river.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMP) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, October 27, 2015 3:46 PM  
**To:** Balla, Richard  
**Subject:** next version of pier 54  
**Attachments:** Oct 2015 draft EPA comments on Pier 54 application version 2.docx

next version of pier 54

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application. There are features of the new design, as noted below, that appear to be improvements over rebuilding Pier 54 as it was originally constructed.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas will reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Raising the pier is also intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides is appropriate. However, the plan for the pier does include significant plantings and landscaping.

Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM<sub>2.5</sub>, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 12:53 PM  
**To:** Neftleberg, Traci  
**Subject:** Please finalize pier 54 letter  
**Attachments:** pier 55 draft comments nov 3 404q -3a.docx

Please finalize pier 54 letter. We would like to get it to RA by 2:00.

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809



DRAFT

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-essential and non-navigable purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary impacts of any sort to this waterway should be avoided wherever practicable.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

Sincerely,

**DRAFT**

Judith A. Enck  
Regional Administrator

Colonel David A. Caldwell  
U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090

Dear Col. Caldwell:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. The U.S. Environmental Protection Agency (EPA) has determined that the project may result in substantial and unacceptable impacts to an aquatic resource of national importance. In order to thoroughly review all available project information, we will undertake an additional 25-day review of the application as provided under Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement between our two agencies.

USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g., piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions.

EPA is generally concerned about the impacts of this project as well as the propriety of constructing completely new structures for non-water dependent purposes, such as entertainment and recreation, in the Hudson River. In light of rising seas due to climate change, further development of shorelines poses increased risks to the public and the environment. The net effect of these actions may be greater cumulative impacts to the Hudson River and all of our coastal waters.

The EPA regards the segment of the Hudson River waterway within the New York-New Jersey Harbor estuary as an aquatic resource of national importance as described in the revised 404(q) Memorandum of Agreement. The importance of the New York/New Jersey Harbor Estuary ecosystem was recognized by EPA when it was designated an Estuary of National Significance in 1987 and included in the National Estuary Program. Unnecessary damage to the estuary should be avoided.

This letter satisfies Part IV 3(a) of the 1992 Section 404(q) Memorandum of Agreement, which requires that we will notify you within 25 days with our opinion regarding whether a substantial and unacceptable impact to an aquatic resource of national importance will result from this project. If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff call Mr. Richard P. Balla, Chief of EPA's Watershed Management Branch, at (212) 637-3788.

Sincerely,

Judith A. Enck  
Regional Administrator

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, October 05, 2015 12:14 PM  
**To:** Cantilli, John  
**Subject:** RE: 54  
**Attachments:** EPA comments on Pier 54 application.docx

Check out this draft...

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Cantilli, John  
**Sent:** Monday, October 05, 2015 11:53 AM  
**To:** Nyman, Robert  
**Subject:** RE: 54

I occasionally troll the web site to see what the corps is up to....

---

**From:** Nyman, Robert  
**Sent:** Monday, October 05, 2015 11:44 AM  
**To:** Cantilli, John <[Cantilli.John@epa.gov](mailto:Cantilli.John@epa.gov)>  
**Subject:** RE: 54

Hmm, wondering why I didn't get this directly. How did you get it?

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Cantilli, John  
**Sent:** Monday, October 05, 2015 11:29 AM  
**To:** Nyman, Robert <[Nyman.Robert@epa.gov](mailto:Nyman.Robert@epa.gov)>  
**Subject:** 54

Gonna go medieval ?

<http://www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/2015/Oct15/199800290.pdf>

Dear ----

The U.S. Environmental Protection Agency (EPA) has reviewed the Joint Application for modification of the U.S. Army Corps of Engineers permit for Pier 54 in Hudson River Park. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the current footprint of 1.9 acres. Sheet 29 of 30 in Attachment 3, Engineering Drawings, provides the coverage calculations for all piers and structures in Segment 5 of Hudson River Park. The total permitted coverage is currently 9.99 acres for this segment. Sheet 29 indicates that some of the other structures were constructed at a smaller than permitted coverage and therefore the cumulative coverage for this segment is actually 9.90 acres, or 0.09 acres less. We do not believe that the current permit allows for cumulative coverage and EPA is not in favor of expanding the coverage for individual piers.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the wet-flood proofing of the few remaining areas is laudable as these actions will reduce damage from storm surge and rising sea levels. More frequent and possibly less intense storms such as nor'easters also pose the threat of damage from high winds and waves. Please describe what steps are being taken to address storm wind damage to objects on the pier and steps that will be taken to prevent debris from being blown into the water.

Raising the piers also has a positive impact by increasing the amount of light reaching the water below the pier. The images Figures 3-5 of attachment 1 are useful in illustrating this. However, the images also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case. Please explain.

EPA supports the comments provided by the National Oceanic and Atmospheric Administration in its letter dated April 16, 2015 regarding fisheries resources. The federal lead agency needs to make a determination of any potential impacts on the endangered shortnose and Atlantic sturgeon. Resident migratory and forage species such as winter flounder, striped bass and alewife should be protected by minimizing the amount of sediment released during construction and adhering to construction timing windows when the species are most vulnerable. In addition, the protection of essential fish habitat should be achieved by adhering to best management practices during construction, including keeping debris out of the water and ensuring the concrete pours inside the hollow pilings do not leak.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. The plan calls for sparing use of slow release fertilizer for turf areas. Please define sparing use and under what conditions it would be used. Ideally, any use of fertilizer should be eliminated if possible due to the proximity to the river. The temporary sediment barriers numbers

1 and 2 on the “Erosion and Sediment Control Details Peir 54” page don’t seem to be denoted on the master map “Erosion and Sediment Control Plan Pier 54” page. Where does the applicant intend to employ those 2 Best Management Practices (BMP) on the pier? Finally, the project’s post-construction plans should include operation and maintenance training for all staff that will be operating and maintaining the stormwater BMPs in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

USACE should make a general conformity determination with regard to air emissions during construction.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard Balla, Chief  
Watershed Management Branch



## Nyman, Robert

---

**From:** Montella, Daniel  
**Sent:** Thursday, October 29, 2015 3:19 PM  
**To:** Matthews, Joan; Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** RE: NEED RESPONSE ASAP - edits to draft EPA comments on Pier 54 app  
**Attachments:** NEED RESPONSE ASAP - edits to draft EPA comments on Pier 54 app

Looks fine to me

- Dan

---

**From:** Matthews, Joan  
**Sent:** Thursday, October 29, 2015 2:08 PM  
**To:** Montella, Daniel; Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** NEED RESPONSE ASAP - edits to draft EPA comments on Pier 54 app  
**Importance:** High

**Need response ASAP** – this will go in the briefing book, which is being compiled for the RA in PR by CEPD.

I have only a few edits – please let me know if they are ok. Feel free to change.  
Tx!

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. USACE issued the original permit to the Trust in 2000 for various projects related to the Hudson River Park development. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than the prior low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent

discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides ~~is~~are appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Monday, October 26, 2015 9:36 AM  
**To:** Matthews, Joan  
**Cc:** Gratz, Jeff; Balla, Richard; Montella, Daniel  
**Subject:** revised draft Pier 54 letter  
**Attachments:** Oct 2015 draft EPA comments on Pier 54 application version 2.docx; Pier 54 Response Options.docx

Joan,

Attached is a modified version of the draft letter on Pier 54 that we discussed last week.

Here is the link to the Section 404(q) dispute resolution process.  
<http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>

Also attached are a few bullets that you might find useful.

Reminder - comments are due November 4. Please let us know how you would like to proceed.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The proposed pier was not considered in the original permit in terms of configuration and location and it thus is a considerable change not covered under the existing permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice indicates that some features within Segment 5 of the park will not be constructed or have changed, due to improved construction techniques, engineering or design requirements. However, the current permit does not specifically allow for relocation or cumulative coverage calculations and EPA is not in favor of expanding the coverage for individual piers under the current permit.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the wet-flood proofing of the few remaining areas is laudable as these actions will reduce damage from storm surge and rising sea levels. More frequent and possibly less intense storms such as nor'easters also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and steps that will be taken to prevent debris from being blown into the water.

Raising the pier also has a positive impact by increasing the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. However, the plan for the pier includes significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management

plan developed and updated periodically to attain or approach zero discharge of nutrients to the river.

The project's post-construction plans should include operation and maintenance training for staff that will be operating and maintaining the stormwater Best Management Practices (BMP) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Since the project location is within a non-attainment area for ozone and maintenance area for PM2.5, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

#### Draft Pier 54 Response Options:

- The Public Notice for Pier 54 was released on October 2 and comments are due November 4.  
<http://www.nan.usace.army.mil/Portals/37/docs/regulatory/publicnotices/2015/Oct15/199800290.pdf>
- We have prepared a draft comment letter and should be prepared to submit it prior to November 4. EPA could submit a 404(q) 3a letter no later than October 30 stating that the project may have an adverse impact on an Aquatic Resource of National Importance <http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>. We do not recommend this for the reasons discussed. (New York State Assemblywoman Glick requested a one week extension to November 9 but we are not sure if that applies to us as well).
- The applicant (Hudson River Park Trust) is requesting that project be authorized by the U.S. Army Corps of Engineers under the existing permit, originally issued in 2000.
- The amount of fill associated with this project is 415 square feet and is restricted to pouring concrete into some of the hollow concrete pilings to make them structurally stronger. This amounts to approximately 0.3% of the total 121,000 square foot project area.
- Climate change issues associated with building this structure over the water appear to be negligible when compared to rebuilding the previous pier 54. Most of the pier is elevated and any potentially vulnerable infrastructure would be wet-waterproofed.
- The environmental impacts associated with the new pier, when compared with replacing the old pier in its former location and configuration, do not appear to warrant an objection from EPA. However, as noted in the draft comment letter, the original permit did not envision the proposed new configuration or location. Therefore, EPA could ask that this project not be included under the current permit and that an application for a new permit be requested USACE.
- EPA's comment letter to USACE is currently drafted for signature by Rick Balla, but it could also be signed by the Clean Water Division director or deputy or the Regional Administrator.

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Tuesday, November 03, 2015 3:43 PM  
**To:** Neftleberg, Traci  
**Subject:** revised Pier 54 letter  
**Attachments:** pier 55 draft comments nov 3 404q -3a.docx

Please finalize this revised Pier 54 letter.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809



## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Friday, January 22, 2016 5:11 PM  
**To:** Balla, Richard; Nyman, Robert  
**Cc:** Gratz, Jeff; Montella, Daniel  
**Subject:** FW: DEC ID# 2-6299-00004/00003  
**Attachments:** dec12216.doc; ATT00001.htm

---

**From:** Enck, Judith  
**Sent:** Friday, January 22, 2016 5:03 PM  
**To:** Matthews, Joan ; Gratz, Jeff ; Montella, Daniel  
**Subject:** Fwd: DEC ID# 2-6299-00004/00003

Sent from my iPhone

Begin forwarded message:

**From:** [Cleanaircmpgn02@aol.com](mailto:Cleanaircmpgn02@aol.com)  
**Date:** January 22, 2016 at 4:39:36 PM EST  
**To:** [DEP.R2@dec.ny.gov](mailto:DEP.R2@dec.ny.gov)  
**Cc:** <[glickd@assembly.state.ny.us](mailto:glickd@assembly.state.ny.us)>, <[enck.judith@epa.gov](mailto:enck.judith@epa.gov)>, <[gratz.jeff@epamail.epa.gov](mailto:gratz.jeff@epamail.epa.gov)>, <[bhorner@nypirg.org](mailto:bhorner@nypirg.org)>, <[bunnygabel@gmail.com](mailto:bunnygabel@gmail.com)>, <[caitlin.pixley@sierraclub.org](mailto:caitlin.pixley@sierraclub.org)>, <[cleanaircmpgn02@aol.com](mailto:cleanaircmpgn02@aol.com)>, <[grussian@nypirg.org](mailto:grussian@nypirg.org)>, <[jim@primeseafood.com](mailto:jim@primeseafood.com)>, <[jmylod@aol.com](mailto:jmylod@aol.com)>, <[Karen.Greene@noaa.gov](mailto:Karen.Greene@noaa.gov)>, <[Naomi.J.Handell@usace.army.mil](mailto:Naomi.J.Handell@usace.army.mil)>, <[nrpa2@aol.com](mailto:nrpa2@aol.com)>, <[Roger.Downs@Sierraclub.org](mailto:Roger.Downs@Sierraclub.org)>, <[sanchalas@assembly.state.ny.us](mailto:sanchalas@assembly.state.ny.us)>, <[Steve\\_Sinkevich@fws.gov](mailto:Steve_Sinkevich@fws.gov)>, <[swidorskit@assembly.state.ny.u](mailto:swidorskit@assembly.state.ny.u)>  
**Subject:** DEC ID# 2-6299-00004/00003

Dear NYS DEC Commissioner Seggos and DEC Region 2 Director Anderson,  
Please see, and confirm receipt of, three organizations' attached comment letter.

The letter opposes the Hudson River Park Trust (HRPT) authority's request for an improper modification of two DEC permits and a DEC water quality certification for a different project in order to allow the Pier 55/Diller Island project to go forward in the Hudson River.

Thank you for extending the comment period on this harmful proposal to Jan. 25, 2016.

Sincerely,

Clean Air Campaign Inc. for Friends of the Earth/NY, and Natural Resources Protective Association

cc: Army Corps, U.S. EPA, U.S. NOAA/NMFS, U.S. FWS, NYS Assemblymember Deborah Glick

Clean Air Campaign Inc., 307 7th Avenue, New York NY 10001, 212-582-2578  
Friends of the Earth/NY, 72 Jane Street, New York NY 10014, 917-539-5300  
Natural Resources Protective Assn., PO Box 050328, Staten Island NY 10305, nrpa2@aol.com

January 22, 2016 [3:45 pm DRAFT]

Basil Seggos, Acting Commissioner  
NYS Department of Environmental Conservation (DEC)  
625 Broadway  
Albany NY 12233-1011

Iver M. Anderson  
NYSDEC Region 2  
47-40 21st St.  
Long Island City NY 11101-5407

Re: DEC ID# 2-6299-00004/00003, Hudson  
River Park Trust application for Pier 54  
permit modification for a new "Pier 55"  
in Hudson River's open waters

By Email and U.S. Postal Service

Dear Commissioner Seggos and Mr. Anderson,

The Hudson River Park Trust (HRPT, a State public authority) has applied to the NYS Department of Environmental Conservation (DEC) for modifications of existing permits (an Article 15 title 5 "Excavation & Fill in Navigable Waters" and an Article 25 Tidal Wetlands permit) and of an existing Sec. 401 Clean Water Act Water Quality Certification **for a different proposal** in the hope that DEC will allow the **Pier 55 (not Pier 54)/Diller Island project** to go forward in what is now open water in an environmentally critical open water habitat in the lower Hudson River ("the River" below).

Friends of the Earth/NY, the Natural Resources Protective Association, and Clean Air Campaign Inc. **strongly oppose this proposal and urge DEC not to approve it.**

We appreciate DEC Commissioner Basil Seggos's decision to extend the comment period on this proposal to Jan. 25, 2016. However, the Notice in DEC's 12/9/15 Environmental Notice Bulletin (ENB) for DEC Region 2 was misleading.

It failed to disclose, for example, that nearly all of the large habitat-shading Pier 55/Diller Island deck, barge(s), and accessways, and the forests of new habitat-destroying pilings to be driven into the riverbed underneath the manmade "Pier 55" island and accessway structures, would be built in and over what is now prime open water habitat in the lower Hudson River Estuary. The ENB Notice also failed to disclose that the "public park" "cultural events space" it cites is actually a money-making amphitheater venture to be controlled by billionaire financial and entertainment mogul Barry Diller through his Pier55 Inc. and other partners.

None of the uses proposed for this high-risk, habitat-threatening, misplaced, non-essential public-private venture is truly water-dependent. Furthermore, the misplaced Pier 54/Pier 55/Diller Island project would put up to 5,000 people at a time in harm's way out in a #1 (highest risk)

hurricane evacuation zone out in the tumultuous lower Hudson River offshore. These 5,000 people could include first responders in deadly storms.

DEC's State Environmental Quality Review (SEQR) Determination that the "Project is a Type I action and will not have a significant effect on the environment" is illegal and unsound. If it goes forward, this project will have potentially devastating cumulative impacts on a unique and limited marine and estuarine habitat of extraordinary national importance. The vigorous protection and preservation of the aquatic resources in this habitat are essential for sustaining valuable Atlantic Coast and Hudson River fisheries and other living marine resources. The Pier 54/Pier55/Diller Island project would also increase traffic and air pollution on and from the West Side highway (especially in combination with the expanded Pier 57 complex proposed to its north in the River), and it would increase noise and destroy treasured River views.

DEC's ENB notice also fails to disclose that the Pier 54/Pier 55/Diller Island project is part of a much larger in-water River development project spanning up to a staggering 490 acres of the Hudson River (that is, the 490-acre in-water portion of HRPT's overall project area that is in the River from Battery Park City to W. 59th Street extended out to the U.S. Pierhead Line 1,000-1,500 feet offshore). Calling the navigable public waterway in these 490 acres of the lower Hudson a "Park" is just spin.

If Governor Andrew Cuomo's Administration wasn't keenly aware of the immense environmental significance of this irreplaceable habitat before, the City Club of New York et al. 2015 lawsuit against HRPT and Pier55, Inc., should have alerted DEC and other agencies to the need to give this critical habitat the maximum protection our most basic State and Federal environmental laws afford.

In conclusion, we strongly urge DEC to deny the requested permit modifications and certification and to let the Hudson River be a river instead. We would appreciate a response to this letter, confirming that DEC has received it, and informing us of DEC's next steps.

Sincerely,

Bunny Gabel, Friends of the Earth, NY Representative  
Jim Scarcella, President, Natural Resources Protective Association  
Marcy Benstock, Executive Director, Clean Air Campaign Inc./Open Rivers Project

cc: U.S. Army Corps of Engineers  
U.S. Environmental Protection Agency  
U.S. NOAA/NMFS  
U.S. Fish & Wildlife Service

???

MT Net Fishing Co., PO Box 1169, Poughkeepsie NY 12602, 845-452-2324

New York Public Interest Research Group, 9 Murray St., NY NY 10007, 212/349-6460  
Sierra?

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Friday, January 29, 2016 10:50 AM  
**To:** Isaac, Martha; Calderon, Wanda; Balla, Richard  
**Subject:** FW: foia # 2169  
**Attachments:** printPage (1).pdf; Pier 54 FOIA response Jan 29 2016.pdf

Martha/Wanda:

Attached is a compilation of the material that is responsive to the FOIA request. There are a number of duplicates within the file because several people may have had the same material. Please let me know if you need anything else.

Thanks, Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Calderon, Wanda  
**Sent:** Thursday, January 14, 2016 4:44 PM  
**To:** Balla, Richard ; Nyman, Robert  
**Subject:** foia # 2169

Hi gentle men,

As stated in our conversation (RB), I sought an extension of time based on consultation until 2/1<sup>st</sup>. See attached online screenshot for your reference. Thanks and enjoy your weekend!

## Nyman, Robert

---

**From:** Nyman, Robert  
**Sent:** Thursday, October 29, 2015 7:42 AM  
**To:** Matthews, Joan  
**Subject:** FW: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.  
**Attachments:** Oct 2015 draft EPA comments on Pier 54 application version 2.docx

Joan,

Sorry, I sent this yesterday but was having problems with my computer and apparently on the third attempt your name got dropped. I hope someone forwarded noticed and forwarded it.

Bob

Robert Nyman  
Regional Coastal Projects Manager  
U.S. Environmental Protection Agency  
290 Broadway, 24th Floor  
New York, NY 10007  
212-637-3809

---

**From:** Nyman, Robert  
**Sent:** Wednesday, October 28, 2015 12:57 PM  
**To:** Montella, Daniel  
**Cc:** Gratz, Jeff ; Balla, Richard ; Nyman, Robert  
**Subject:** Re: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Joan,

Here is a revised version with your comments. I may have sent this 2 or 3 times as my computer is having issues.

Bob

---

**From:** Montella, Daniel  
**Sent:** Wednesday, October 28, 2015 11:58 AM  
**To:** Nyman, Robert  
**Cc:** Gratz, Jeff; Balla, Richard  
**Subject:** FW: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

- Dan

---

**From:** Matthews, Joan  
**Sent:** Wednesday, October 28, 2015 9:54 AM

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. As per the process established in the original permit, as features (e.g. piers) of the park are funded and designed, the applicant must request authorization from USACE to construct those individual features. If USACE authorizes the feature, it will issue a permit modification, including any special conditions. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The location, size and configuration of the pier as now proposed was not in the original permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. It is proposed to be built just north of the original Pier 54 footprint within Segment 5 as a raised square, rather than low linear pier. The Public Notice states that some features within Segment 5 of the Park will not be constructed and others have changed, due to improved construction techniques, engineering or design requirements. The additional 0.8 acres of coverage should be offset by reducing the amount of coverage of other features in this segment. EPA requests that the permit modification, should it be issued, includes an updated table of allowable coverage calculations for this segment similar to Sheet 29 in the February 2015 Joint Application.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the flood proofing of the few remaining areas is intended to reduce damage from storm surge and rising sea levels. However, more frequent and possibly less intense storms, such as nor'easters, also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and to prevent debris from being blown into the water.

Shading is an issue of concern for fish habitat when placing structures in water. Raising the pier is intended to increase the amount of solar exposure below the pier. Figures 3-5 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case as the caissons on which it is built are likely very close to the bottom of the river. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. The use of compost for maintaining soil fertility and the non-use of pesticides is appropriate. However, the plan for the pier does include significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management plan developed and updated periodically to attain or approach zero discharge of nutrients to the River.

The project's post-construction plans should include operation and maintenance training for staff who will be operating and maintaining the stormwater Best Management Practices (BMPs) in the project and ensure that there is a schedule for the operation/maintenance of the BMPs at the site.

Finally, since the project location is within a non-attainment area for ozone and a maintenance area for PM<sub>2.5</sub>, USACE should make a general conformity determination. A general conformity applicability analysis considering all direct and indirect sources of emissions should be conducted in accordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor exceed its applicable de minimis level (40 CFR 93.153(b)), a full conformity determination would be required for that pollutant or precursor.

If you have any further questions, please contact Robert Nyman, Regional Coastal Project Manager, at 212-637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Richard P. Balla, Chief  
Watershed Management Branch

**To:** Balla, Richard; Gratz, Jeff

**Cc:** Nyman, Robert; Montella, Daniel

**Subject:** RE: Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Coming along nicely. I have more edits – I think we need to set up the whole permit modification issue – that the trust is asking for a permit mod and explain from what. Let's tell that story a bit.

It's on my table, so someone stop by and pick up. I hope to see the next version today.

Thanks.

---

**From:** Balla, Richard

**Sent:** Tuesday, October 27, 2015 4:55 PM

**To:** Matthews, Joan; Gratz, Jeff

**Cc:** Nyman, Robert; Montella, Daniel

**Subject:** Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Joan, here is a revised draft of the Pier 54 letter (and a scan of your mark up); note it is for my signature.

Thanks to Bob for his work on it, as well as Dan for his input.

-rick

Rick Balla, Chief, Watershed Management Branch

USEPA Region 2, 290 Broadway (24th Floor), NY NY 10007 212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

---

**From:** Nyman, Robert

**Sent:** Tuesday, October 27, 2015 4:43 PM

**To:** Balla, Richard <[Balla.Richard@epa.gov](mailto:Balla.Richard@epa.gov)>; Montella, Daniel <[Montella.Daniel@epa.gov](mailto:Montella.Daniel@epa.gov)>

**Subject:** Pier 54 draft letter without "improvements" sentence.

Pier 54 draft letter without "improvements" sentence.

Robert Nyman

Regional Coastal Projects Manager

U.S. Environmental Protection Agency

290 Broadway, 24th Floor

New York, NY 10007

212-637-3809



## Nyman, Robert

---

**From:** Gratz, Jeff  
**Sent:** Tuesday, December 22, 2015 4:27 PM  
**To:** Balla, Richard; Montella, Daniel; Nyman, Robert  
**Subject:** FW: pls call; the lr seeking NEPA EIS first  
**Attachments:** GlickArmyCorpsPier55.pdf

Fyi - I told Judith that I would call Marcy if she preferred.

-----Original Message-----

From: RiverCAC@aol.com [mailto:RiverCAC@aol.com]

Sent: Tuesday, December 22, 2015 3:49 PM

To: Enck, Judith <Enck.Judith@epa.gov>

Cc: Gratz, Jeff <Gratz.Jeff@epa.gov>; jim@primeseafood.com; brentblackwelder@yahoo.com; BunnyGabel@gmail.com; jmylod@aol.com; grussian@nypirg.org; lshapiro@rffund.org; allisontupper@verizon.net; rivercac@aol.com

Subject: pls call; the lr seeking NEPA EIS first

The Hon. Judith Enck, Region 2 Administrator, U.S. EPA Dear Ms. Enck,

I would very much like to talk with you before the holidays about important factual errors in the second letter EPA's Richard Balla sent to the Army Corps about Public Notice NAN-1998-00290.

Assemblymember Deborah Glick's 11/13/15 2-page Comments to the Army Corps on Public Notice (PN) NAN-1998-00290 (the Big Permit for Segments 3, 4, 5, 6 and 7 of the priceless 490-acre habitat in the Hudson River) are attached. The Corps had explicitly asked in its October 2015 PN whether or not the Corps should use the old Big Permit NAN-1998-00290 [for 490 acres of the River] to authorize Pier 55/Diller Island. Assemb. Glick's submission requests a full FEDERAL Environmental Impact Statement (EIS) UNDER NEPA for the ENTIRE 490-acre HABITAT in the Hudson River between Battery Park City and W.

59th St. extended out to the U.S. Pierhead Line 1,000-1,500 feet offshore that was the subject of the Corps' original 5/31/00 Big Permit NAN-1998-00290.

This entire habitat--double the size of Westway's--stands to be degraded and ultimately destroyed (like the coastal fisheries it sustains) unless the federal natural resource agencies that opposed the Westway permits to build in and over these waters for seven years begin to live up to their responsibilities again.

(FYI, Assemb. Glick refers to the entire irreplaceable 490-acre marine and estuarine habitat of extraordinary national importance for which she is seeking a NEPA EIS before the Corps authorizes Pier 54/55/Diller Island as "the entirety of the Hudson River Park." Translation: the term "Hudson River Park" refers to the entire 550 project area that includes 490 acres of critical habitat in the River's nearshore waters along with 60 acres of upland along the River's edge, under the unusual terminology in Sec. 3(e) of the Hudson River Park Act, the Definitions section.)

I hope you'll give me a call. I'll be in and out at Clean Air Campaign's office today and tomorrow, and probably Thursday as well.

Very truly yours,

Marcy Benstock, 212-582-2578

Executive Director, Clean Air Campaign Inc.</HTML>



DEBORAH J. GLICK  
Assemblymember 66<sup>TH</sup> District  
New York County

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

CHAIR  
Higher Education Committee

COMMITTEES  
Environmental Conservation  
Rules  
Ways & Means

**Public Comments to the Army Corps of Engineers**  
**Public Notice: NAN-1998-00290**  
**November 13, 2015**

Thank you for opening up the proposed project at Pier 55 for public comment. This project would have massive implications for the environment as well as the surrounding community. The proposal currently under review would construct a new pier, Pier 55, in undeveloped water which is home to sensitive fish and wildlife habitats. The Army Corps of Engineers is tasked with reviewing the potential impact of the creation of a new Pier and ultimately, to decide if it will grant permits for this construction. The Hudson River Park Trust relied on an Environmental Assessment from 1998 as the justification that there would be no impact from this construction. That is unacceptable. I urge you to conduct a full Federal Environmental Impact Statement prior to consideration of any new permits.

Prior to reviewing permits, it is imperative that the Army Corps considers the Federal Water Pollution Act, aka the Clean Water Act, and the relevant statutes which apply to this project. One of the intents of this legislation was to "maintain oceans, watersheds, and their aquatic ecosystems to protect human health, support economic and recreational activities, and provide healthy habitat for fish, plants, and wildlife." Clearly, the proposal of a massive new construction in untouched waters at Pier 55 is a major threat to the healthy habitat for fish, plants and wildlife, especially the endangered sturgeon species. Violation of the Clean Water Act is grounds for immediate dismissal of this application and I urge you to fully consider this prior to reviewing the permits requested of the Army Corps.

In addition to the violations of the Clean Water Act, the proposal from Hudson River Park Trust (HRPT) grossly misrepresents the project and in reality, this project does not fall under the jurisdiction of the existing Army Corps permits for the Hudson River Park. While HRPT markets Pier 55 as a "replacement pier" this is misleading and inaccurate. The proposed Pier 55 is a completely new development project, not a simple replacement of what was Pier 54. While State Legislation allows for a change in the footprint of Pier 54, this legislation was never intended to create a whole new pier. Furthermore, the existing permit from the Army Corps for Pier 54 is not applicable to the construction of anything that is outside of the current footprint of Pier 54. Pier 55 would be larger than what was Pier 54 and the negative impacts of new construction would be significant.

The environmental impacts for this project range from its construction to its use. As proposed, the majority of the piles from Pier 54 will remain, while close to 1,000 new piles will be driven into the water just north of Pier 54 in order to create a new pier. Additionally, Pier 55 would rise about 7-stories high and will cast major shadows into the water, further compromising the pristine marine and estuarine habitat. The piles alone would not just destroy habitats during the construction, but these permanent structures then impede the fish migration while also decreasing the mobility of sediment and trash. There are also impacts from the use, including, but not limited to, a new landscaped pier over the

river with the potential for non-point source pollution from fertilizer to debris, as well as new solid waste and sewage.

In addition to the detrimental impacts from the construction and use of the pier itself, a “floating actor’s barge” is proposed to be located off the shore of Pier 55. According to the lease documents, the barge would be a structure to support the activities of theater productions taking place on the pier. Yet no details about this vessel have been revealed, so it is unknown how large it would be or how long it would be docked. If granted permits from the Army Corps, this proposed vessel could become a large, recurring structure which would further jeopardize the natural habitats. Such a vessel is not in keeping with the intended goals of the Hudson River Park to be an open recreation space that is fully accessible by the public.

During the creation of the park, a General Project Plan (GPP) and State EIS were conducted. During this review in the early 1990s, the commercial and recreational uses for the park were proposed to be “water-dependent uses.” These are seen as symbiotic with the waterfront nature of the HRP. Since then, HRP has continued to develop, and while doing so, is increasing the amount of commercial development that does not fall within the scope of the previous review, and is increasingly focused on non-water-dependent uses for new developments.

The Hudson River Park Trust has already signed a lease with an organization which would use Pier 55 as a music and theater venue. This is far from a water-dependent use which was the mandate for HRP when it was created. There is no reason why this development has to take place on the water- a music venue is equally, if not more, appropriate for construction on the uplands. The actors barge is a staging area for a theater production and had no relation to water-dependent uses. This proposed project is also sandwiched by a full redevelopment of Pier 57 for retail, food and office space to the North and City plans for a recycling center on Gansavoort to the South. Pier 57 was never included in the original General Project Plan for commercial development. The recycling center alone will bring a parade of barges which will be removing the material to be recycled from the facility. So while the State EIS is already out of date, it is also increasingly out of line the realities of the park which is actually being dramatically developed. I have advocated for a full Federal EIS to be conducted since this project was announced, and I urge you to conduct a full Federal EIS for the entirety of the Hudson River Park as it clearly deserves.

Finally, I appreciate that you are conducting a public comment period. Unfortunately, I still think that many people are not going to be able to submit comments within the timeframe. Due to the delay in mailing your public notice announcements, you agreed to extend the public comment period after I made the request. Yet the deadline was never extended on the website so many people still effectively had only two weeks to write and submit comments. So while you might receive some public comments during this period, a public hearing would more appropriately allow for a more comprehensive understanding of the public concerns as they relate to this project. I would once again request that you call a public hearing for this project.

Thank you for your attention to this application. As mentioned, this project would be detrimental to the environment and the surrounding community and I urge you to thoroughly review all of these implications prior to considering issuing permits.

## Nyman, Robert

---

**From:** Matthews, Joan  
**Sent:** Monday, January 25, 2016 5:22 PM  
**To:** Balla, Richard; Montella, Daniel; Nyman, Robert  
**Subject:** Fwd: DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River  
**Attachments:** SCAC DEC Diller Island letter.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Enck, Judith" <[Enck.Judith@epa.gov](mailto:Enck.Judith@epa.gov)>  
**Date:** January 25, 2016 at 5:19:37 PM EST  
**To:** "Matthews, Joan" <[Matthews.Joan@epa.gov](mailto:Matthews.Joan@epa.gov)>, "Gratz, Jeff" <[Gratz.Jeff@epa.gov](mailto:Gratz.Jeff@epa.gov)>  
**Subject:** Fwd: DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River

Sent from my iPhone

Begin forwarded message:

**From:** Roger Downs <[roger.downs@albany.twcbc.com](mailto:roger.downs@albany.twcbc.com)>  
**Date:** January 25, 2016 at 4:33:44 PM EST  
**To:** <[basil.seggos@dec.ny.gov](mailto:basil.seggos@dec.ny.gov)>, <[christopher.s.mallery@usace.army.mil](mailto:christopher.s.mallery@usace.army.mil)>  
**Cc:** <[DEP.R2@dec.ny.gov](mailto:DEP.R2@dec.ny.gov)>, <[Enck.Judith@epamail.epa.gov](mailto:Enck.Judith@epamail.epa.gov)>  
**Subject:** DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River

Dear Commissioner Seggos-

Please find the attached comments on DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River.

Thanks,

Roger Downs  
Conservation Director  
Sierra Club Atlantic Chapter  
353 Hamilton Street  
Albany, NY 12210



January 25, 2016

Basil Seggos, Acting Commissioner  
NYS Department of Environmental Conservation  
625 Broadway  
Albany NY 12233-1011

Iver M. Anderson  
NYSDEC Region 2  
47-40 21st St.  
Long Island City NY 11101

Re: DEC ID# 2-6299-00004/00003, Hudson River Park Trust (HRPT) application for permit modifications for a new "Pier 55" (Diller Island) in the Hudson River

Dear Commissioner Seggos and Mr. Anderson:

The Sierra Club Atlantic Chapter urges the Department of Environmental Conservation (DEC) to deny the Hudson River Part Trust (HRPT) application for modification of existing permits as well as an existing Clean Water Act Water Quality Certification that would facilitate more building in and over the waters of the Hudson River off Manhattan. The current application, as proposed by the HRPT, is in fact intended not simply to modify previous approvals for a smaller Pier 54 at a different location, but to allow a totally new, manmade island and amphitheater ("Pier 55," also called Diller Island) to be built in open water.

We recognize that the Department of Environmental Conservation approaches the protection of the waters of the United States with a commitment to first avoid any disturbance of aquatic or wetland habitats before considering certification of any intrusive project. Often the decision to allow disturbance or destruction of water resources is influenced by the perceived public benefit and necessity of a proposal, and whether the urgency of such a project precludes other options or alternatives. In the case of Diller Island, every aspect of this project is unnecessary, voluntary and superfluous in the context of public need.

The proposed Diller Island structures would cover what is now and forever has been open water. The large numbers of pilings needed to support the weight of a massive amphitheater into the riverbed will cause unacceptable and irreversible impacts to the local Hudson River habitat and the ecosystems it supports. Furthermore, what HRPT and the Environmental Notice Bulletin are calling a public park and cultural events space is in fact a commercial amphitheater project, designed to generate revenue for Barry Diller and his investment partners, in spite of substantial public subsidies.

This project is not truly water-dependent, and its significant destruction of coastal marine habitat

should make it impermissible under the federal Clean Water Act. Siting the Diller Island project in the River - instead of on a higher, dryer, safer upland location - would put people and property in the path of deadly storms and could set precedents for the misuse of navigable public waterways across New York and the rest the country. The DEC has a heightened responsibility to anticipate the catastrophic impacts of climate change as sea level rise and the increased frequency of storm surges will put ever-larger numbers of New Yorkers in harms way. As evidenced by Governor Cuomo's NY Rising program and the proposed creation of the Climate Change Mitigation and Adaptation Program through his 2016-17 Executive Budget Proposal the State is investing significant resources in smart climate adaptation strategies. Diller Island goes against the grain of all these efforts. There are plenty of underutilized upland locations throughout the five boroughs of NYC that could make good use of innovative design and funding to create meaningful public open space without risking public safety and damaging critical aquatic habitat.

In weighing clean water certification for this project, the DEC must also take into account how climate change already is inflicting tremendous stress on marine biodiversity, which only increases the importance of protecting our remaining estuarine habitats. The entire river corridor along the western shore of Manhattan Island constitutes irreplaceable spawning, nursery and feeding grounds for over 100 fish species including the endangered shortnose and Atlantic sturgeon. Numerous studies have demonstrated that while individual piers left in place may have some habitat value, mass platforms on piers, as is proposed for Diller Island, create dense shaded areas that inhibit biotic function and diminish use by important fishery species.

It is in this context that The Sierra Club is alarmed that DEC could find that this project would not have a significant impact on the environment in its SEQRA determination, cutting off any further study of the potentially devastating and long-lasting effects upon critical aquatic habitat and public safety. In Addition, the Pier 55 Diller Island project is only part of a much larger plan to develop the river over the 490-acre "Hudson River Park" area, with connections between the piers (such as a likely connection with Pier 57 to the north) and real estate developments at multiple other pier locations. Such misplaced building out into a priceless Hudson River habitat must be stopped. If permitted and constructed, Diller Island would become a symbol of indifference to climate change and the erosion of marine biodiversity at a time when the city requires a visionary approach to this developing global catastrophe. The Sierra Club Atlantic Chapter urges you to deny the application for the permit modifications HRPT has requested and to deny any new permits or Water Quality Certification for Pier 55/Diller Island.

Thank you for consideration of these comments,



Roger Downs, Conservation Director  
Sierra Club Atlantic Chapter  
353 Hamilton Street, Albany NY 12210

cc: U.S. Army Corps of Engineers  
U.S. Environmental Protection Agency

## Nyman, Robert

---

**From:** Balla, Richard  
**Sent:** Tuesday, October 27, 2015 10:16 AM  
**To:** Nyman, Robert  
**Cc:** Montella, Daniel  
**Subject:** Joan's comments on pier 55: BOB: Joan asked if we can have a redraft to her electronically by first thing tomorrow...

Joan's comments on pier 55:

BOB:

Joan asked if we can have a redraft to her electronically by first thing tomorrow...

I'm in a meeting but wanted to get this in your hands asap.

By email to Joan on Wednesday to Rick & Bob Nymann

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
ATTN: Regulatory Branch

DRAFT

(due 11/4)

To Whom It May Concern:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number NAN-1998-00290 regarding the request from the Hudson River Park Trust (Trust) to replace Pier 54 with a new structure in a new location. We are aware that the February 2015 Joint Application (Pier 54 and Pier 54 Pile Field Request for Modification of U.S. Army Corps of Engineers (USACE) Permit 1998-00299) submitted by the Trust contains additional information and we based our review in part on that information. We offer the following comments, including those pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The proposed pier was not considered in the original permit in terms of configuration and location and it thus is a considerable change not covered under the existing permit. The proposed new configuration of Pier 54 covers 2.7 acres, or 0.8 acres more than the original footprint of 1.9 acres. The Public Notice indicates that some features within Segment 5 of the park will not be constructed or have changed, due to improved construction techniques, engineering or design requirements. However, the current permit does not specifically allow for relocation or cumulative coverage calculations and EPA is not in favor of expanding the coverage for individual piers under the current permit.

Planning for resilience to climate change is key in vulnerable coastal areas such as New York City. The planned raising of the vast majority of the pier above the 100 year flood plain and the wet-flood proofing of the few remaining areas is ~~laudable~~ <sup>laudable</sup> ~~and these actions~~ will reduce damage from storm surge and rising sea levels. More frequent and possibly less intense storms such as nor'easters also pose the threat of damage from high winds and waves. The applicant should describe what steps are being taken to address storm wind damage to objects on the pier and steps that will be taken to prevent debris from being blown into the water.

Raising the pier also <sup>is also intended to</sup> ~~has a positive impact by increasing~~ the amount of solar exposure below the pier. Figures 3-3 of attachment 1 are useful in illustrating this. However, the figures also appear to show that the area under Pier 57 to the north of the site is receiving full solar exposure when that cannot be the case. This apparent discrepancy calls into question the validity of the figures for Pier 54 and should be explained by the applicant.

Management of stormwater on the pier is critical to maintaining water quality of the receiving waters below. EPA appreciates the use of compost for maintaining soil fertility and the non-use of pesticides. However, the plan for the pier includes significant plantings and landscaping. Given the sensitivity of the surrounding Hudson River to excess nutrients, the property manager should be directed to amend soils and maintain plantings consistent with a nutrient management

D.S.



and updated periodically to attain or approach zero discharge of nutrients to the

at-construction plans should include operation and maintenance training for staff  
uting and maintaining the stormwater Best Management Practices (BMP) in the  
e that there is a schedule for the operation/maintenance of the BMPs at the site.

location is within a non-attainment area for ozone and maintenance area for  
should make a general conformity determination. A general conformity  
lysis considering all direct and indirect sources of emissions should be  
ordance with 40 CFR 93.153. Should the emissions of any pollutant or precursor  
able de minimis level (40 CFR 93.153(b)), a full conformity determination  
d for that pollutant or precursor.

urther questions, please contact Robert Nyman, Regional Coastal Project  
637-3809 or via email at [nyman.robert@epa.gov](mailto:nyman.robert@epa.gov).

Sincerely,

Rick Balla, Chief, Watershed Management Branch, USEPA Region 2, 290 Broadway, NY NY 10007  
212-637-3788 [balla.richard@epa.gov](mailto:balla.richard@epa.gov)

**Request Details****Status :** Assignment Determination**Due Date :** 02/01/2016 19

Tracking Number : EPA-R2-2016-002169

Submitted Date : 12/16/2015

 Requester : Douglas E. Lieb

Perfected Date : 12/16/2015

Organization : Emery Celli Brinckerhoff &  
Abady LLP

Last Assigned Date : 12/17/2015

Fee Limit : \$1,000.00

Requester Has Account : Yes

Request Track : Complex

Email Address : dlieb@ecbalaw.com

Due Date : 02/01/2016

Phone Number : N/A

Assigned To : Clean Water Division

Fax Number : N/A

Last Assigned By : Wanda Calderon (Region 2)

Address : 600 Fifth Avenue  
10th Floor

City : New York

State/Province : NY

Zip Code/Postal Code : 10027

**Submission Details****Request Handling**Requester Info Available to Yes  
the Public :

Request Perfected : Yes

Request Track : Complex

Perfected Date : 12/16/2015

Fee Category : Commercial

Acknowledgement Sent Date:

Fee Waiver Requested: No

Unusual Circumstances ? : Yes

Fee Waiver Status: N/A

consultation

Expedited Processing No  
Requested :

Expedited Processing Status : N/A

5 Day Notifications: No

Litigation : No

**Request Description**

Short Description : N/A

All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive.

Description Available to the Yes  
Public :Has Description Been No  
Modified?

0/2000

**Attached Supporting Files**

No supporting files have been added.

## Case File

Direct URL : <http://localhost:8080/foia/action/public/view/request/80a74e97>

### Case Details

Type of Case : FOIA

Received Date : 12/16/2015

Fiscal Year : 2016

Clock Initially Started On : 12/16/2015

Total Days Pending : 19

Case Responsive Records

No records have been uploaded.


**Consultations**

No consultations have been added.

## Correspondence to Requester

One item found.

1

Subject	From	To	Date	Detail	Remove
FOIA Request EPA-R2-2016-002169 Submitted	System	Douglas E. Lieb	12/16/2015		

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: EPA-R2-2016-002169
- Requester Name: Douglas E. Lieb
- Date Submitted: 12/16/2015
- Request Status: Submitted
- Description: All records, including any email correspondence, memoranda, or schedules or other records of meetings, relating to EPA's response to U.S. Army Corps of Engineers Public Notice NAN-1998-00290, from November 4, 2015 to November 24, 2015, inclusive.

One item found.

1

## Other Correspondence

One item found.

1

Attached File	Type	Size (MB)	Remove
<a href="#">assignment instructions.msg</a>		0.04	

One item found.

1

**Appeals**

No appeals have been filed.



**Invoice**

Total Amount Billed Which Has Been Sent To Requester: \$0.00  
Invoice will not be stored until close out process has begun.

**Payments**

Total Amount Owed: \$0.00  
  
No payments to display.

Restricted Materials

No restricted materials have been added.







**Admin Costs**



Entries	
No entries have been added.	

**Assigned Tasks**

No tasks have been assigned.

### Comments (3)

<i>Date / Time</i> ▼	<i>User Name</i> ⇅	<i>Edit</i>	<i>Remove</i>	<i>Detail</i>
12/17/2015 04:37 PM	Martha Isaac			
Forwarded to Watershed Management branch for review and comment.				
12/17/2015 03:05 PM	Wanda Calderon			
See case file for guidance				
12/17/2015 02:46 PM	Wanda Calderon			
contacted CWD for guidance				

Assigned Reviewers					
Review Outcome	Review Order	Assigned Reviewer	Review Date	Change Review Order	Action
	1	Wanda Calderon	TBD		
	2	Mary Mears	TBD	